Supreme Court, U.S.
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No. 09-952 FEB 8 - 2010

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In The

Supreme Court of the United States

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JOHN H. BRADBURY,

Petitioner,

v.

IDAHO JUDICIAL COUNCIL,

Respondent.

◆

**On Petition For A Writ Of Certiorari
To The Idaho Supreme Court**

◆

PETITION FOR A WRIT OF CERTIORARI

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JOHN L. RUNFT
RUNFT & STEELE
LAW OFFICES, PLLC
1020 W. Main St., Suite 400
Boise, Idaho 83702
Tel. (208) 333-8506
Fax (208) 343-3246
email: jrunft@runftsteele.com

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Petitioner, John Bradbury, is a district judge in the rural Second Judicial District of the State of Idaho, with resident chambers in Idaho County, Idaho. Idaho Code § 1-809 requires that district judges "actually reside" at the place designated as their resident chambers. The Idaho Judicial Council ("Council") conducted a formal inquiry into whether Judge Bradbury actually resided in Idaho County. The Council closed the matter after Judge Bradbury informed the Council that, in addition to his home in Latah County, he owned a fully furnished home in Idaho County, that he voted there, and that his residence in the homes depended on where his work was. Subsequently, the Council reopened the matter and brought formal charges recommending suspension on the basis of "additional information and inquiries." Throughout these proceedings and on appeal before the Idaho Supreme Court, Judge Bradbury repeatedly sought and was denied discovery of the "additional information and inquiries" that formed the factual basis of the Council's new charges. The Chief Justice of the Idaho Supreme Court served as the Chairman of the Idaho Judicial Council and sat on the appeal panel.

Three interrelated questions are presented:

> Is Judge Bradbury entitled to injunctive and declaratory relief for violation of his due process rights under the Fifth and

QUESTIONS PRESENTED – Continued

Fourteenth Amendments to the United States Constitution:

(1) for denial of his right to discover the facts and evidence supporting the charges against him?

(2) for objective bias arising from the dual role of the Chief Justice of the Idaho Supreme Court serving as Chairman of the Judicial Council during proceedings in this matter and simultaneously sitting on the appeal of this matter wherein fundamental discovery was denied?

(3) for vagueness of the state statutory residence requirements under Idaho Code § 1-809?

LIST OF PARTIES

The parties below are listed in the caption: John H. Bradbury, Petitioner; Idaho Judicial Council, Respondent.

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STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The Opinion of the Idaho Supreme Court sought to be reviewed was entered on September 10, 2009, and was made final by the Final Order entered by the Idaho Supreme Court on November 10, 2009.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the Constitution of the United States:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment to the Constitution of the United States:

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Idaho Code § 1-801:

1-801. NUMBER OF JUDICIAL DISTRICTS – NUMBER OF JUDGES – RESIDENT CHAMBERS. The state is divided into seven (7) judicial districts described in this chapter. The number of district judges for each judicial district shall be as described by this chapter. The resident chambers of a district judge within a judicial district shall be as described in this chapter.

Idaho Code § 1-809:

1-809. RESIDENCE REQUIREMENT OF JUDGES. District judges shall actually reside at the place designated as resident chambers.

Idaho Code § 1-2103:

1-2103. REMOVAL, DISCIPLINING, OR RETIREMENT OF JUDGES OR JUSTICES – PROCEDURE. This section is lengthy and therefore set out in the Appendix at page 148.

Canon 1(A) of the Idaho Code of Judicial Conduct:

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 2(A) of the Idaho Code of Judicial Conduct:

A. Judges should respect and comply with the law and should conduct themselves at all times in a manner that does not detract from public confidence in the integrity and impartiality of the judiciary.

Idaho Code § 9-342(1):

9-342. ACCESS TO RECORDS ABOUT A PERSON BY A PERSON. (1) A person may inspect and copy the records of a public agency or independent public body corporate and politic pertaining to that person, even if the record is otherwise exempt from public disclosure.

Idaho Judicial Council Rule 24:

CONFIDENTIALITY OF PROCEEDINGS. All papers filed with and proceedings before the Council, or before the masters appointed by the Supreme Court pursuant to Rule 31, shall be confidential until a record is filed by the Council in the Supreme Court, provided, however, that if allegations against a judge are made public by the complainant, judge or third persons, the Judicial Council, and/or the judge may comment on the existence, nature, and status of any investigation and may correct any false or misleading information including false or misleading information on the actions taken by the Judicial Council.

Idaho Court Administrative Rule 32(c):

APPLICATIONS. This rule shall apply to all court records existing on or after the date of adoption of this rule. Provided, this rule shall not prevent access to records, otherwise exempt from disclosure by the following persons in the following situations.

(2) Parties to an action and their attorney examining the court file of the action, unless restricted by order of the Court, except as limited in paragraphs (g)(11), (12), (15) and (17)F.

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STATEMENT OF THE CASE

The Idaho Supreme Court filed its Opinion herein on September 10, 2009 (App. 2-35), on appeal from the Findings Of Fact, Conclusions Of Law and

Recommendations Of The Idaho Judicial Council entered on February 25, 2000. (App. 42-49) The Idaho Supreme Court found that Petitioner, Idaho State District Judge John Bradbury, was not in compliance with the requirement set forth in Idaho Code § 1-809 that he "actually reside" in Idaho County, Idaho. (App. 1)[1] The Supreme Court held that the "common sense interpretation of 'actually reside'" means that Judge Bradbury must "maintain his primary residence in Idaho County" and gave Judge Bradbury 21 days to comply.[2] Justice Kidwell, *Pro Tem*, dissented from this finding that "actual residence" as required by the statue required subjective determinations not in the record. (App. 34-35)

Judge Bradbury, is an Idaho district judge in the rural Second Judicial District of the State of Idaho, with resident chambers in Idaho County. He provides judicial services in three of the five counties in the Second Judicial District. By letter dated May 2, 2006, The Idaho Judicial Council ("Council") notified Judge Bradbury that it was conducting an "initial inquiry into the issue of whether you actually reside in Idaho County as required by statute." (App. 147) Judge Bradbury responded by letter dated May 4, 2006, and informed the Council that he owned a fully furnished home in Grangeville, Idaho County, that he voted there, and that he also owned a fully furnished home in more centrally located Lewiston, Nez Perce County, Idaho. (App. 145-146) He explained in that letter that he used both cities as a mailing address and that where he stayed depended on where his work was. *Id.* Almost a year later, by letter dated April 18, 2007, the Council thanked Judge Bradbury for his "prompt response" and informed him that it was "closing its file on the matter." (App. 144)

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[1] Idaho Supreme Court Justice Joel D. Horton recused himself from these proceedings. He and Judge Bradbury had been the principal candidates in a contested race for an open seat on the Idaho Supreme Court in 2006. Former Idaho Supreme Court Justice Wayne L. Kidwell was appointed *Pro Tem* in this case to fill the full complement of five Justices (Idaho Code § 1-201).

[2] Judge Bradbury timely filed a Notice of Compliance and supporting Affidavit, reserving all rights to further legal recourse. (App. 133-136)

A few months later, by letter dated September 12, 2007, the Council, under its new Chairman, Chief Justice Eismann, notified Judge Bradbury that the Council was reopening its file on the residence issue based on "additional information and inquiries." (App. 142) The nature of the "additional information and inquiries" was not disclosed, in fact, they never have been disclosed to Judge Bradbury. By letter dated January 22, 2008, the Judicial Council advised Judge Bradbury that it had "determined that there appears to be substantial evidence that you do not 'actually reside' in Idaho County." (App. 140-142) It informed Judge Bradbury that if he did not "demonstrate with objective, demonstrable evidence that you actually reside in Idaho County" the Judicial Council would bring formal charges. *Id.* This time Judge Bradbury did not respond, because the Judicial

Council did not define what would qualify as actually residing in Idaho County, and he was unable to demonstrate compliance with the unarticulated standards of what constituted "actual" residence demanded by the Judicial Council.

On July 22, 2008. (App. 2) the Council brought formal charges against Judge Bradbury for failing to actually reside in Idaho County and thereby violating the Idaho Judicial Cannons. (App. 5, 43) The Council recommended immediate suspension unless Judge Bradbury comply with the "actually reside" provision, but provided no criteria for such compliance. Throughout these proceedings by interrogatories[3] and motions[4] before the Council and by motions[5] on appeal before the Idaho Supreme Court, Judge Bradbury repeatedly sought and was denied[6] discovery of the "additional information and inquiries" that formed the basis of the Council's charges. In its order entered on July 9, 2009, denying Judge Bradbury's Petition for Extraordinary Relief and Motion for Reconsideration, the Idaho Supreme Court stated: "(T)he determination of residency will be made on the existing pubic record and not upon any evidence sought be discovered by Respondent."[7]

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[3] Discovery before the Judicial Council: Bradbury's Interrogatories and Requests for Production and Responses thereto. (App. 126-135)

[4] Motions before the Judicial Council to continue formal proceedings and compel discovery. (App. 118-125)

[5] Motions before the Idaho Supreme Court to compel discovery.

[6] Judicial Council orders denying discovery. (App. 50, 52); Idaho Supreme Court Orders denying discovery. (App. 38-39; 40-41)

Following denial of Judge Bradbury's repeated efforts to discover information from the Idaho Judicial Council regarding the charges against him in ID Sup. Ct. Case No. 36175-2009, on July 17, 2009, Judge Bradbury brought a civil rights action in the U.S. District Court of Idaho for violation of his rights to due process against the Justices of the Idaho Supreme Court in their individual capacities under 42 U.S.C. § 1983. Judge Bradbury sought a TRO to prevent the Idaho Supreme Court from proceeding with the hearing on the merits in the appeal from the Council set for July 22, 2009. On July 21, 2009, Bradbury's Motion for the TRO was heard and denied, primarily on the basis of an affidavit filed by Chief Justice Eismann. (App. 65-68) filed two hours before the TRO hearing. The hearing on the merits in the case below was heard by the Idaho Supreme Court on July 22, 2009. (App. 8-9) Based in material part on an analysis of Chief Justice Eismann's affidavit filed in the federal proceedings against the known record of these proceedings, Judge Bradbury filed a motion to disqualify Chief Justice Eismann (App. 81-84) in the Idaho Supreme Court.

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[7] Order. (App. 39); Note: after these orders and Chief Justice Eismann's Recusal (App. 36-37), the caption was changed and the Opinion (App. 2) and Final Order (App. 2) designate Bradbury as the "Petitioner" and the Council as "Respondent."

On August 7, 2009, Chief Justice Eismann filed a "Recusal" from further participation in the case below. (App. 36-37) With reference to Judge Bradbury's efforts to obtain discovery of information supporting the Judicial Council's charges against him, Chief Justice Eismann alleged in his Recusal that Judge Bradbury "seeks to use the federal law suit as a vehicle to obtain information from the Judicial Council, undoubtedly including the name(s) of the person or persons who reported his violation to the Judicial Council. The only reason for obtaining that information would be retaliation." (App. 36-37) Judge Bradbury filed motions to disqualify Justices Warren Jones, Roger Burdick, and Jim Jones (*See, e.g.*, motion to disqualify Justice Jim Jones, App. 55-58), based in part on the Recusal and based on the disclosure that the Conference Minutes of the Idaho Supreme Court showed that these three Justices had conferred with Chief Justice Eismann regarding Bradbury's motions regarding discovery and due process issues (App. 59-72), thereby creating a high potential for importation into their deliberations of facts and conclusions outside of the record).[8]

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[8] Justice *Pro Tem* Kidwell did not participate in the conferencing sessions where Bradbury's discovery motions were considered.

On September 9, 2009, the Idaho Supreme Court issued its Opinion No. 114 on the merits in case No. 36175-2009. (App. 2-37) On September 30, 2009, Judge Bradbury filed his Notice of Compliance with the Opinion (App. 133-135), supported by his affidavit (App. 136-137), and reserving any and all rights to any further legal recourse that he has or may have.

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ARGUMENT

Although this case does not involve conflicting decisions between courts, the compelling reason for granting this petition arises from the cascading effect of the denial of the fundamental due process right to discover the facts underlying charges brought against one – in this case a sitting state district judge. The cascading effect of such denial leads to issues of bias and questions the very integrity of the court system itself. Judge Bradbury pursued these issues vigorously against a clearly reluctant Court. In the end, two justices recused themselves and the *Pro Tem* Justice dissented from a troubled opinion. Who better qualified than a member of the judiciary to seek to rectify this situation?

1. Denial of discovery of the facts underlying the charges against Judge Bradbury was a violation of his right to due process of law under the Fifth and Fourteenth Amendments of the United States Constitution.

In summary, Judge Bradbury asserts in this case that his rights to due process of law have been denied beginning with a refusal to allow discovery at all levels of these proceedings. The subject transgression of the objective standards of due process by the Idaho Supreme Court in this matter has resulted in the violation of Judge Bradbury's right to due process under the Fifth and Fourteenth Amendments to the United States Constitution.

He avers that the ruling of the Idaho Supreme Court based on its "independent review of the facts of the record" (App. 2) is constitutionally flawed for the reason that the "record" reviewed by that Court is merely the *ipse dixit* record designed by the Council exempt from the curative light of discovery. His many attempts to engage in discovery were rejected with the result that he had no opportunity to obtain disclosure of the "new information" relied on to renew the charges against him. The continued discovery blackout maintained by the Idaho Supreme Court on appeal exacerbated the already existing appearance of objective bias on the part of the Court arising from the dual function of the Chief Justice who not only served as the Chairman of the Council during these proceedings,[9] but sat on the appeal of said proceedings to the Idaho Supreme Court.

At no time did the Judicial Council ever deny (a) that the requested documents existed; (b) that the requested documents were not relevant; (c) that the requested documents were privileged; (d) that the requested documents contained exculpatory evidence. The denial of discovery is clearly a matter of deprivation of due process, especially, as here, where it deprived Judge Bradbury of knowledge of what "new information" generated the charges against him.

> Due process requires that the government provide citizens and other actors with sufficient notice as to what behavior complies with the law. Liberty depends on no less: "[B]ecause we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Grayned v. City of Rockford,* 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). Put more colloquially, "[t]hose regulated by an administrative agency are entitled to know the rules by which the game will be played." *Ala. Prof'l Hunters Ass'n v. FAA,* 177 F.3d 1030, 1035 (D.C. Cir. 1999) (internal quotation marks

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[9] The Chief Justice of the Idaho Supreme Court is the *ex officio* Chairman of the Idaho Judicial Council (Idaho Code § 1-2101)

> omitted). *U.S. v. AMC Entertainment, Inc.*, 549 F.3d 760 (C.A. 9 Cal. 2008) ("The due process clause . . . guarantees individuals the right to fair notice of whether their conduct is prohibited by law. *Forbes v. Napolitano*, 236 F.3d at 1011.)

In its Opinion, the Court below side steps the discovery issue by announcing that "the discovery sought by Petitioner simply isn't relevant to the legal interpretation of the words "actually reside," nor to the factual determination regarding the location of Petitioner's actual residence." (App. 10) This assertion is erroneous in its presumption. Discovery of the "new information" might have unearthed additional criteria or precedent to be considered for determining the key elements as to what constitutes "actual" residence: it may have discovered bias that would have changed the make up of the Court and resulted in a different outcome. All we know is that "new information" was the basis of reopening the case. Further, such assumptions by the Court below about undisclosed evidence are incompatible with the heightened burden of proof that is required, where, as here, individual interests such as liberty and property rights are at stake. *Addington v. Texas*, 441 U.S. 418 (1979).

2. Chief Justice Eismann's failure to recuse himself until after the case was submitted in conjunction with his participation in the proceedings of the Idaho Judicial Council, when coupled with the denial of pertinent discovery and measured by the objective standards of bias and impartiality, violated Bradbury's due process rights under the Fifth and Fourteenth Amendments of the United States Constitution served to taint those members of the Court below who conferred with him in conference on due process issues that were raised on motion.

(App. 69-79)

The discovery blackout, the disclosures (and omissions) in Chief Justice Eismann's affidavit and effect the allegation in his Recusal that Judge Bradbury was seeking "retaliation," further contribute to these cascading violations of these interrelated due process rights. Chief Justice Eismann's failure to recuse himself at the outset of this appeal has unfortunately served to import a clear objective bias into the deliberative process of the Idaho Supreme Court in Case No. 36175-2009. These combined due process deficiencies served to call into question the fairness of the Idaho Supreme Court's adjudication of the issue of the vagueness of the requirement under Idaho Code § 1-809 that a district judge "actually reside" at the place designated as his resident chambers. This questionable adjudication was manifested by *Pro Tem* Justice Kidwell in his dissent. (App. 34-35)

The prejudicial effect of the post-hearing/ submission recusal of Chief Justice Eismann is underscored by the ex-record claim in the recusal that Judge Bradbury's sole motive is "retaliation." Further it serves only to inject an element of bias with respect to the other three conferencing Justices. Accordingly, Judge Bradbury moved for their recusal, which was denied.[10]

The "retaliation" allegation attempts to focus and thereby limit consideration of the issue of discovery to the sole issue of disclosure of a complaining witness. In fact, Judge Bradbury's repeated discovery requests were primarily documentary and encompassed all documentary evidence relating to the "additional information and inquiries" that underlie the re-opening of the "matter" before the Judicial Council. (App. 91-93, 94-101, 118-125, 126-132) The permanent members of the Court below inadvertently show their animus below by cherry picking testimony of Judge Bradbury from an interview on October 31, 2007, and from the Hearing on December 17, 2008 to make him out a scofflaw. (App. 3-4, 13-15) Reading Judge Bradbury's entire explanation of his position and his particular comments in the December 17 hearing (App. 102-117) about his good faith attempts to comply with the residency requirements lends quite a different light and portrays a hard working, caring judge who took extraordinary steps to establish and conform to the resident requirements of Idaho Code § 1-809. *Pro Tem* Justice Kidwell concurred in this assessment. (App. 34-35)

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[10] On pages 6 of the Opinion below (App. 7), Judge Bradbury is admonished for not having moved for recusal earlier. The genesis of the recusal motions was not just the fact that the Chief Justice sits as Chairman of the Judicial Counsel, but rather it was the convergence of a number of factors which gradually developed; e.g., the continual denial of discovery, Chief Justice Eismann's affidavit and recusal, the conference notes of the Court showing that all of the Justices except Justice Kidwell had conferred regarding the salient issues of due process. It was Chief Justice Eismann who should have recused himself earlier.

In summarizing these cases of judicial bias that violate due process, the Court in *Caperton, et al. v. A.T. Massey Coal Co., Inc.*, 556 U.S. ___ (2009) pointed out that "the inquiry is an objective one. The Court asks not whether the judge is actually subjectively biased, but whether the average judge in his position is 'likely' to be neutral *or* whether there is an unconstitutional 'potential' for bias." (Emphasis supplied) *Caperton*, p. 9 (slip op.). Such constitutionally unacceptable potential for bias exists in the present case, because of (a) the refusal of the Judicial Council and, on appeal the Idaho Supreme Court, to disclose to Judge Bradbury information, reports, and other documents, including its minutes regarding the "new information and inquiries" supporting the renewed charges by the Judicial Council against Judge Bradbury, (b) the ex-record averments made in the affidavit and the Recusal of Chief Justice Eismann, (c) the failure of Chief Justice Eismann to recuse himself until after the case was argued and submitted, and (d) the conferencing among the

Justices (except *Pro Tem* Justice Kidwell) concerning key issues in this case regarding discovery and due process in the face of the high potential for importation into their deliberations of facts and conclusions derived from Chief Justice Eismann's participation as Chairman of the Council during the prosecutorial and investigative phases of the proceedings of the Judicial Council against Judge Bradbury.[11]

Although he did not vote to break any ties, it may reasonably be inferred that he did preside over the Council while matters involving Judge Bradbury were considered after he became Chairman of the Judicial Council on August 1, 2007. Accordingly, it is reasonable to assume that he heard the Council deliberations about the evidence against Judge Bradbury, participated in the discussions, and reviewed the documents and evidence adduced in the matter of Judge Bradbury. It is not unreasonable to assume that when participating in said discussions he expressed opinions. Opinions of the Chief Justice carry great weight. At the very least, it is reasonable to deduce that he heard the discussions and opinions of others and reviewed the documentary evidence adduced to support the charges against Judge Bradbury.

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[11] A close reading of Chief Justice Eismann's affidavit does not support the Court below's claim that "he had not participated in the proceedings before the Council relating to Petitioner." (App. 6) His references in his affidavit to "the prior Judicial Council investigation (para. 3) and to the "initial inquiry" (para. 4) both refer to the initial inquiry that was open on May 2, 2006 and closed on April 18, 2007 before he became Chairman of the Judicial Council. All other statements refer to the December 11, 2008 hearing and information related thereto. The affidavit is silent regarding his presiding over the Council at the time the charges were brought against Judge Bradbury on September 12, 2007, and during the investigative period from then until shortly before the December 17, 2008, except to say he did not vote.

The cumulative effect of these factors is to create a reasonable presumption of an unconstitutional potential of bias in these proceedings which result in the violation of the said objective due process standards of bias thereby violating Judge Bradbury's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

3. The statutory requirement of Idaho Code § 1-809 that Judge Bradbury must "actually reside" is unconstitutionally vague and therefore violates Judge Bradbury's due process rights under the Fifth and Fourteenth Amendments of the United States Constitution.

A statute is void for vagueness when its prohibitions are not clearly defined. *Grayned*, 488 U.S. at 108. As *Pro Tem* Justice Kidwell noted, there has not been evidence adduced by the Council in this case to support an objective interpretation of Idaho Code § 1-809. (App. 34-35) Some statutes define the term "reside" or "residence" so that their constitutionality is not questioned. *See, e.g.*, *St. Alphonsus Reg. Med. Center v. Board of County v. Comm. of Ada*

County, 148 Idaho 51, 190 P.3d 870 (2009). Even if "actually reside" were to be interpreted to mean only one's physical presence at an abode, it still does not address the frequency of said physical presence. The statute is impermissibly vague, and the Court below cannot rewrite or amend this fatally vague statute. *Hague v. Comm. for Ind. Organization*, 387 U.S. 496, 518 (1939). The Court below has exercised exactly the sort of *ad hoc* subjective interpretation that due process does not allow. *Grayned*, 488 U.S. at 108-09.

CONCLUSION

As requested above, Judge Bradbury respectfully requests the Court to grant review of this case for the reason that the status of discovery as a due process right needs further clarification when it concerns interrelated fundamental due process issues, such as the right, here, to access information basic to charges brought against a person.

Respectfully submitted,

John L. Runft
Runft & Steele
Law Offices, PLLC
1020 W. Main St., Suite 400
Boise, Idaho 83702
Tel. (208) 333-8506
Fax (208) 343-3246
email: jrunft@runftsteele.com

In the Supreme Court of the State of Idaho

JOHN H. BRADBURY,)
Petitioner,)
) FINAL ORDER
v.)
IDAHO JUDICIAL) Supreme Court
COUNCIL,) Docket No. 36175-2009
)
Respondent.)

IT APPEARING that on September 30, 2009, Petitioner John H. Bradbury timely filed an affidavit with the Court, together with a Notice of Compliance, stating that "he is actually residing in Idaho County and will continue to reside in Idaho County so long as he is required to do so by law." The OPINION ISSUED HEREIN ON SEPTEMBER 10, 2009, is, and shall be, the FINAL ORDER OF THIS COURT. No costs or fees to either party.

DATED this 10th day of November, 2009.

By Order of the
Supreme Court

/s/ Stephen Kenyon
Stephen W. Kenyon, Clerk

cc: Counsel of Record
Idaho Judicial Council

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 36175

JOHN H. BRADBURY,	)	**Boise,**
	)	**July 2009 Term**
Petitioner,	)	**2009 Opinion No. 114**
v.	)	
IDAHO JUDICIAL COUNCIL,	)	**Filed: September 10, 2009**
	)	
Respondent.	)	**Stephen W. Kenyon, Clerk**

Petition for review of determination by the Idaho Judicial Council.

Clements, Brown & McNichols, P.A., Lewiston; Runft & Steele Law Offices, PLLC, Boise; and M. Karl Shurtliff, Boise; for petitioner. Michael E. McNichols argued.

The Roark Law Firm, Hailey, for respondent. R. Keith Roark argued.

J. JONES, Justice.

District Judge John H. Bradbury (Petitioner) asks the Court to review a determination of the Idaho Judicial Council (Council) that he does not "actually reside" in Idaho County as required by Idaho Code sections 1-803 and 1-809. The Council recommended that Judge Bradbury be suspended from serving as a district judge until such time he actually resides in

Idaho County and that he pay the costs incurred by the Council in this proceeding. Based upon our independent review of the facts in the record, the Court finds that Petitioner is not in compliance with such residency requirement and orders that he take action to comply with the law.

I. BACKGROUND SETTING

Petitioner was elected in 2002 for a district judge position with resident chambers in Idaho County. He took office in January 2003. Idaho Code section 1-809 requires that district judges actually reside at the place designated as their resident chambers. On December 20, 2002, Petitioner purchased a house in Grangeville, Idaho County, and on October 16, 2003, he changed his voter registration to Idaho County.

On May 2, 2006, the Council notified Petitioner that it was conducting an inquiry into whether he was actually residing in Idaho County. Petitioner responded by letter on May 4, 2006, stating that he owned a fully furnished home in Grangeville, that he had a homeowner's exemption on that home, and that he was registered to vote and did vote in Idaho County. He also stated that he had a fully furnished home in Lewiston and that the home at which he stayed depended upon where his work was. By letter dated April 17, 2007, the Council informed Petitioner that, based upon his response, the Council was closing the file. The Council noted in its subsequent findings that Petitioner had not informed the Council "that he spent practically none of his nights in Grangeville, or, that in the prior six (6) months he had spent fewer than ten (10) evenings in Grangeville."

On September 12, 2007, the Council sent Petitioner a letter stating that it had received additional information and was re-opening the inquiry into whether he was actually residing in Idaho County. On October 31, 2007, Robert G. Hamlin, the Executive Director of the Council, interviewed Petitioner regarding the issue of whether he actually resided in Idaho County. That interview was recorded and transcribed by a court reporter. During that interview, Petitioner stated, "And my Constitutional duty is to do my job, and I think it trumps whatever the statutory obligation might be." He continued, "And I want to do my job. And I want to comply with the law. But I can't do both, as much as I want to." When asked, "So do you – you spend most of your time in Lewiston?" Petitioner answered, "Yeah, I do." Hamlin followed up by asking, "How many days – let me rephrase that, how many evenings a week do you spend in Grangeville?" Petitioner answered, "Practically none." He said that he got most of his personal mail in Lewiston and had registered his vehicles in Nez Perce County. He told Hamlin he spent most of his weekends at his ranch in Clearwater County where he is building a house. He also stated, "I can tell you that I would live in Grangeville if I could do my work and live in Grangeville."

On January 22, 2008, the Council sent Petitioner a letter stating that it did not appear that he actually resided in Idaho County. The letter noted Petitioner's contention that he could not do his job efficiently if he lived in Grangeville, but stated that if the statute requires that he actually reside in Idaho County he must do so. The Council concluded by stating that unless he could show within fourteen days that he actually resided in Idaho County, the Council would proceed with formal charges. Petitioner did not attempt to do so, and on July 22, 2008, the Council commenced formal proceedings.

The notice of formal proceedings alleged four counts: Counts One and Three alleged violations of Canons 1(A) and 2(A) of the Code of Judicial Conduct for failing to actually reside in Idaho County, and Counts Two and Four alleged violations of the same canons regarding travel expense vouchers. The Council held an evidentiary hearing on December 17, 2008, at which Petitioner, the Idaho County Deputy Clerk, and Hamlin testified. Petitioner testified that he only stays overnight in Grangeville when he has a trial there and absent a trial he spends less than one night per week in Grangeville.[1] He testified that

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[1] When questioned about the amount of time he actually resides in Idaho County, Bradbury testified as follows:

> Q. But as a practical matter, you are spending less than one night per week in Grangeville unless there's a trial?
>
> A. That's true.

(Continued on following page)

during 2008, he had spent several nights in Grangeville because his workload there had increased. He also acknowledged his prior statements, "And my Constitutional duty is to do my job, and I think it trumps whatever the statutory obligation might be . . . and I want to do my job, and I want to comply with the law, but I can't do both as much as I want to."

At the conclusion of the hearing, the Council issued written findings of fact, conclusions of law, and recommendations. It concluded that Petitioner did

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. . . .

Q. Which, again, is less than one night per week in Grangeville, Idaho?

A. It's less than one night a week up until this year where I've had at least one night a week and sometimes two, because I've had more trials.

. . . .

Q. In fact, you told Mr. Hamlin that in the six months preceding that interview, that is the six months prior to the 31st of October, 2007, you had spent less than ten evenings in Grangeville.

. . . .

A. I don't know if that's what I said or not. I wouldn't say that I didn't say it. It's consistent with my experience. I don't deny that.

. . . .

Q. And you spend practically none of you [sic] nights there [in Idaho County].

A. Not this year. This year I've spent several nights there because I've had more cases there. The workload has increased.

not actually reside in Idaho County in violation of Idaho Code sections 1-803 and 1-809, and that his failure to do so was a willful violation of Canons 1(A) and 2(A) pursuant to Idaho Code section 1-2103. It made no findings regarding Counts Two and Four regarding travel vouchers. It recommended that Petitioner be immediately suspended until he begins actually residing in Idaho County, that if he does move to Idaho County he be required to submit monthly affidavits certifying where he actually resides, and that he pay the costs of counsel hired by the Council. On March 27, 2009, Petitioner filed a verified petition in this Court seeking review of the Council's determination.

II. PROCEDURES AND STANDARD OF REVIEW

The Idaho Supreme Court holds original jurisdiction over claims of judicial misconduct. Idaho Const. Art. V, § 2; *Idaho Judicial Council v. Becker*, 122 Idaho 288, 292-93, 834 P.2d 290, 294-95 (1992). The Idaho Judicial Council is charged with investigating such claims. Idaho Code § 1-2103. Section 1-2103 "provides the means by which the Council may initiate investigations of judicial conduct and make recommendations to the Court for discipline, removal, or disability retirement of judges." *Becker*, 122 Idaho at 293, 834 P.2d at 295. Although the Council may initiate such investigations and make recommendations, "this Court has the ultimate authority and responsibility to decide what should be done in each case based on our weighing of the evidence presented to the Council and any additional evidence the Court permits." *Id.* This Court does not review the findings or conclusions made by the Council to determine if they are supported by the evidence and the law. It makes its own findings and conclusions from the evidence in the record. *Id.* When doing so, this Court applies a clear and convincing standard of proof. *Id.*

III. MOTIONS TO DISQUALIFY

Before turning to the issues presented in the petition, the Court will consider the motions filed by Petitioner on August 21, 2009, seeking to disqualify Justices Roger S. Burdick, Jim Jones and Warren E. Jones. It does not appear that Petitioner seeks to disqualify Justice Pro Tem Wayne L. Kidwell. The briefs filed in support of the motions contend that the three Justices are biased and not impartial. The motions are not supported by affidavits. Some background is necessary in order to place the motions in context.

After two continuances – one at the behest of Petitioner and the other at the request of the Council – this matter was scheduled for oral argument on July 22, 2009. On July 17, 2009, Petitioner filed suit in the United States District Court for the District of Idaho against each of the Justices then sitting on this case – Chief Justice Daniel T. Eismann, Justices Roger Burdick, Jim Jones and Warren Jones, and Justice Pro Tem Wayne Kidwell. In his federal suit, Petitioner asserted a variety of claims against the individual Justices and sought, among other things, to have the federal judge vacate the July 22 argument. The federal judge declined to vacate the argument and it proceeded as scheduled. Central to the claims in the federal suit were allegations that Chief Justice Eismann, as Chairman of the Idaho Judicial Council, had participated in Council proceedings pertaining to this matter and, therefore, could not act objectively. Petitioner has admitted having no claim that the Chief Justice was actually biased against him.

On August 5, 2009, Petitioner filed a motion with this Court, seeking to disqualify Chief Justice Eismann. On August 7, 2009, Chief Justice Eismann filed a recusal based upon the claims in the federal lawsuit. The Chief Justice cited an affidavit filed by him in the federal lawsuit showing that he had not participated in the proceedings before the Council relating to Petitioner, that he had been in the hospital undergoing chemotherapy for lymphoma at the time the Council's hearing was conducted, and that he had not discussed the Council's findings and recommendations with other members of the Council.

The timing of the motions to disqualify three of the four remaining Justices presiding on the case is somewhat troubling. The case was argued on July 22 and fully submitted for decision. Although the Idaho Rules of Civil Procedure do not apply in appellate proceedings, Rule 40(d), pertaining to disqualification of trial court judges, is instructive. Where a party seeks to disqualify a trial judge without cause, the motion must be timely filed before contested matters are presented for consideration. *See* Idaho R. Civ. P. 40(d)(1)(B). A motion for disqualification of a trial judge for cause may be made at any time but must be accompanied with an affidavit "stating distinctly the grounds upon which disqualification is based and the facts relied upon in support of the motion." Idaho R. Civ. P. 40(d)(2)(B). Petitioner's motions were unaccompanied by affidavits spelling out why the three Justices should be disqualified for bias or lack of impartiality, so the motions are more in the form of motions seeking to disqualify without cause. Should a party wish to file such a motion in order to call the attention of a Justice to a potential concern regarding participation on a particular case, the same should be filed in a timely manner before argument, not after the litigant has evaluated the tenor of questions asked by the particular Justice at the argument. It would be a dangerous precedent to allow a litigant to observe the questioning of the Justices at oral argument and, after the fact, seek to disqualify those Justices who appear to have reservations about aspects of the litigant's case.

Furthermore, there is nothing stated in Petitioner's motions indicating why an earlier suggestion of recusal could not have been made. From the commencement of this appeal, it was known to Petitioner that Idaho Code section 1-2101 provides that the Chief Justice of the Idaho Supreme Court is to serve as a member of the Council, as well as its chairman, and that Chief Justice Eismann was fulfilling that capacity when the appeal was filed. The identity of the other Justices who would preside over the matter was also known and it was known that all four would participate in all proceedings and deliberations. If any of those facts gave rise to concern on Petitioner's part, they should have been made known early on, at least prior to the argument. Nothing in Petitioner's motions or supporting briefs show any recently discovered facts that would cast doubt upon the ability of the three challenged Justices to perform their duties in an unbiased and impartial manner.

Regardless of whether the motions were timely, no grounds exist for any of the three Justices to recuse themselves under either the Code of Judicial Conduct or Idaho law. The Code of Judicial Conduct provides that "A judge shall disqualify himself or herself in a proceeding where the judge's impartiality might reasonably be questioned, including but not limited to instances where . . . the judge has a personal bias or prejudice concerning a party or a party's lawyer, or has personal knowledge of disputed evidentiary facts that might reasonably affect the judge's impartiality in the proceedings." This appears to be the ground upon which Petitioner relies in his motions for disqualification.

Petitioner's argument is essentially that Chief Justice Eismann had knowledge of evidentiary facts outside of the record by virtue of his position on the Council, that the Chief Justice was biased against Petitioner, and that the bias is likely to have infected the impartiality of three of the other four Justices deliberating on the case. Petitioner has cited absolutely no facts that would support the contention that the three Justices targeted by the motions for disqualification hold any animus toward Petitioner or that any three of the four remaining Justices somehow obtained knowledge of pertinent facts not contained in the record. It should be noted that this opinion addresses two primary questions. The first question is the interpretation of the words "actually reside," which is a pure question of law. This question is not influenced in any manner by the facts of the case, whether they are contained in the record or elsewhere. The second question is a factual one – whether Petitioner actually resides in the county designated by the Legislature. The three Justices who are the subject of the disqualification motions have no knowledge of facts pertaining to Petitioner's actual residency, except as contained in the record. As will be apparent from the reading of this opinion, almost all of the pertinent facts relevant to this factual determination are based on statements made by Petitioner to Hamlin, testimony given by Petitioner at the Council hearing, or documents signed by Petitioner. The Court specifically advised the parties in several orders issued prior to argument that the case would be decided only upon facts contained in the record and that is precisely what the Court has done.

Whether it is necessary for a judicial officer to disqualify himself in a given case is left to the sound discretion of the judicial officer himself. *Sivak v. State,* 112 Idaho 197, 206, 731 P.2d 192, 201 (1986). A statement of former U.S. Supreme Court Chief Justice William Rehnquist is instructive as to how an appellate judge might make a recusal decision. *See Microsoft Corp. v. United States,* 530 U.S. 1301 (2000). There, the Chief Justice was considering whether he should recuse himself in an appeal where his son was a partner in a firm representing a party in the appeal. Chief Justice Rehnquist considered 28 U.S.C. § 455, a federal statute that sets forth the legal criteria for the disqualification of federal judicial officers. Although the federal statute and its interpretation are not binding on this Court, Chief Justice Rehnquist's statement is instructive because of the similar purpose and language in Canon 3 of the Idaho Code of Judicial Conduct and 28 U.S.C. § 455. Chief Justice Rehnquist stated:

> Section 455(a) contains the more general declaration that a Justice "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." As this Court has stated, what matters under § 455(a) "is not the reality of bias or prejudice but its appearance." *Likely v. United States,* 510 U.S. 540, 548, 114 S.Ct. 1147 127 L.Ed.2d 474 (1994). This inquiry is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.

Id. at 1302. According to the Chief Justice, the decision whether a judge's impartiality can "reasonably be questioned" is to be made in light of the facts as they existed, and not as they were surmised or reported. *Id.* Applying this standard to his situation, the Chief Justice declined to recuse himself, concluding that his participation in the case did not give rise to an appearance of partiality. *Id.*

Nor is such the case here. Petitioner has failed to present facts that a reasonable observer could consider in determining that recusal is appropriate. Petitioner merely speculates that Chief Justice Eismann had knowledge of facts outside of the record, which the Chief Justice denied in his sworn affidavit, and that somehow those facts were imparted to three of the four other Justices sitting on his case. He fails to disclose why the fourth Justice was not exposed to the same information. It is interesting to note that Petitioner is suing all four of the remaining Justices in his federal court action, asserting individual claims against each and every one of the four.

Even had Petitioner carried his burden of showing bias or lack of impartiality, three-fourths of the panel need not have recused itself. In *Eismann v. Miller,* 101 Idaho 692, 619 P.2d 1145 (1980), the Court considered whether recusal was appropriate where the appellant in the case before the Court had filed a separate legal action against all members of the Court, as well as a number of trial court judges. The Justices declined to recuse themselves based on the "rule of necessity." According to the Court, "Ordinarily, a member or members of this court engaged in legal action with a party appearing before this court in regard to another matter would voluntarily disqualify themselves. However, this is far from an ordinary situation." *Id.* at 696, 619 P.2d at 1149. The Court continued: "As recognized in *Higer v. Hansen,* 67 Idaho 45, 170 P.2d 411 (1946), where disqualification results in an absence of judicial machinery capable of dealing with the matter, disqualification must yield to necessity. 67 Idaho at 50-51, 170 P.2d at 413-14." *Id.* To grant Petitioner's motions for disqualification, even if they had merit, would place the decision of this Court in the hands of five pro tem justices, would require reargument of the case, and would likely produce the same result because the determination of this case will be made strictly on the facts in the record and be based upon the interpretation of the applicable law. Neither the facts nor the law would change with new judicial officers.

IV. DISCOVERY ISSUES

Petitioner contends that the Council wrongfully failed to respond to his discovery requests. He sought: (a) the identity of the person(s) who prompted the Council investigations; (b) the additional information received by the Council that prompted it to re-open the investigation in 2007; (c) the internal report of the Council's preliminary investigation; (d) all complaints made to the Council against Petitioner; (e) all documents generated and reviewed by the Council in response to those complaints; and (f) the minutes of all Council meetings in which Petitioner's name appears. The Council refused to provide the requested information on the ground that it was confidential pursuant to its Rule 24. Petitioner renewed his request for discovery on a number of occasions before this Court.

We need not address the confidentiality issue because it is clear the discovery sought was not and is not relevant to the residency issue upon which this case turns. Rule 22(b) of the Rules of Idaho Judicial Council adopts the discovery rules of the Idaho Rules of Civil Procedure, including Rule 26. Rule 26(b)(1) of those rules limits discovery to "any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . " The discovery sought by Petitioner simply isn't relevant to the legal interpretation of the words "actually reside" nor to the factual determination regarding the location of Petitioner's actual residence. As previously pointed out, almost all of the factual evidence regarding Petitioner's residence was provided in this matter by Petitioner.

Furthermore, Petitioner did conduct discovery in the proceedings before the Council and he had full opportunity to cross-examine witnesses in the Council hearing. If Petitioner believed that he had not been able to obtain and present additional relevant evidence to the Council, he had the option under Idaho Code section 1-2103 to request this Court to permit him to introduce additional evidence for our consideration. Petitioner failed to make such a request and, therefore, the Court's review was, pursuant to the statute, confined to the record of proceedings before the Council.

V. RIGHT TO CONFRONT ACCUSERS

Petitioner contends that he is entitled to know the identity of the person(s) who prompted the Council investigations because he has a right to confront his accusers. Even though the Executive Director of the Council testified twice under oath in the Council hearing that there was no original complaint or verified statement filed with the Council, Petitioner continues to request discovery of the identity of his accuser. He asserts, "Judge Bradbury has a basic right to know the identity of his accuser and the accusations made." Although he does not expressly state the source of this basic right, we assume that Petitioner is referring to the Sixth Amendment right to confront one's accusers. That Amendment applies to criminal prosecutions, and this is not a criminal prosecution.

Even if it were applicable and even if there were an "accuser," it would not give Petitioner the right to the identity of any such person. No such person testified at the hearing and no information from an informer was contained in the record before the Court. The witnesses at the hearing were Petitioner, the Idaho County Clerk, and Hamlin. Petitioner had ample opportunity to confront those witnesses. He was present when they testified, he questioned them, and he does not contend that he was in any way wrongfully limited in such questioning. If any person provided information that played a part in the Council's investigation, such person was not an "accuser" as that term is used in connection with the Sixth Amendment right "to be confronted with the witnesses against him." No such person was a witness nor was any information that any such person may have provided included in the record. Our findings are based upon the evidence in the record.

VI. ALLEGED PREJUDICE OF THE JUDICIAL COUNCIL

Petitioner contends that the Council was prejudiced against him. He contends that the alleged prejudice is shown by two facts.

First, the Council's notice of formal proceedings alleged two counts of violations of the Judicial Canons regarding travel expense vouchers when the Council had not previously given Petitioner notice of those allegations. The Council did not make any findings or recommendations regarding those counts. Therefore, that conduct does not indicate prejudice. It may have been different had the Council found violations that were clearly unsupported by the facts and law.

Second, Petitioner contends that the letter dated October 7, 2008, from the Special Examiner hired by the Council shows that the Council had pre-judged the disciplinary proceedings. Petitioner's counsel had inquired whether the Council would be willing to mediate the matter. In response, the Special Examiner wrote back:

> I have passed your suggestion that we mediate the disciplinary case now pending against Judge Bradbury on to the Judicial Council for their review. The Council has authorized me to agree that, if your client admits to having violated I.C. §§ 1-803 and 809 by not actually residing in Idaho County during the past two years (Count I) and agrees to immediately take up full-time residence in Idaho County, we will mediate the question of what sanction should be imposed and drop all other charges.
>
> The Council feels strongly that Judge Bradbury's refusal to obey the relevant statute, even after having been warned by the Executive Director of the need to do so, cannot be mediated away as if it had never occurred.

Petitioner argues that the second paragraph of the letter shows that the Council had already determined that he did not actually reside in Idaho County. When that paragraph is read in context with the preceding paragraph, it merely states that the Council would not mediate whether Petitioner was required to comply with Idaho Code §§ 1-803 and 1-809. Any mediation would be limited to the sanction imposed if Petitioner admitted the violation.

VII. THE MEANING OF THE WORDS "ACTUALLY RESIDE"

Idaho Code section 1-803 provides that the resident chambers of one district judge in the Second Judicial District shall be in Idaho County. Idaho Code section 1-809 provides, "District judges shall actually reside at the place designated as resident chambers." Petitioner ran for and was elected to the district judge position that was required to establish resident chambers in Idaho County. The primary issue before us is whether Petitioner actually resides in Idaho County.

Petitioner contends that the term "actually reside" is ambiguous. It is Petitioner's position that he can actually reside in several different locations at the same time. In his testimony before the Council he indicated he was actually residing in Grangeville even though he spent six if not seven days per week in another house in another county. During oral argument it was argued on his behalf that the term only requires physical presence in Idaho County, as infrequently as once every ten years. He also argued that the word "actually" is mere surplusage and that he has no idea why the Legislature may have used the word "actually" to modify "reside."

In *Sweitzer v. Dean*, we stated the standard for interpreting the language of a statute as follows:

> When interpreting the meaning of the language contained in a statute, this Court's task is to give effect to the legislature's

> intent and purpose. In construing a statute, the Supreme Court may examine the language used, reasonableness of the proposed interpretations, and the policy behind the statutes. It is incumbent upon this Court to interpret a statute in a manner that will not nullify it, and it is not to be presumed that the legislature performed an idle act of enacting a superfluous statute. The Supreme Court will not construe a statute in a way which makes mere surplusage of provisions included therein.

118 Idaho 568, 571-72, 798 P.2d 27, 30-31 (1990) (citations omitted). In addition, "Statutory interpretation begins with the 'literal words of the statute,' and those 'words must be given their plain, usual, and ordinary meaning, and the statute must be construed as a whole.'" *Cordova v. Bonneville County Joint Sch. Dist. No. 93,* 144 Idaho 637, 641, 167 P.3d 774, 778 (2007) (citations omitted).

The word "reside" means "to dwell for a long time; have one's residence; live (*in* or *at*)." Webster's New World Dictionary 1142 (3rd College Ed. 1988). "Residence" is defined as the "place where one actually lives, as distinguished from a domicile." Black's Law Dictionary 1335 (8th Ed. 2004). The word "actually" means "as a matter of actual fact; really." Webster's at 14. Thus, in order to actually reside at his or her resident chambers, a judge is required to actually live in the designated county. In *Intermountain Health Care, Inc. v. Board of Commissioners of Blaine County*, we defined "residence" as "the place where one *actually lives* or has his home; a person's dwelling place or place of habitation; an abode; the house where one's home is; a dwelling house." 109 Idaho 412, 414, 707 P.2d 1051, 1053 (1985) (quoting *Perez v. Health & Social Services,* 573 P.2d 689, 692 (N.M. 1977) (emphasis added)).

The words "actually reside" or derivatives thereof have long been used in Idaho's legal history. They appear in section 5 of the Organic Act of the Territory of Idaho, 12 Stat. L. 808, ch. 117 (1863), which provided that every "free white male inhabitant" above the age of twenty-one years who was an "actual resident" of the Territory at the time of passage of the act was entitled to vote and eligible to hold office in the Territory. Upon statehood, article VI, section 2 of the Idaho Constitution provided the right to vote to twenty-one year old male citizens who had "actually resided in the state or territory" for six months. Idaho Const., art. VI, § 2 (amended 1962). The words have also been written into a variety of statutes. In order to qualify for certain scholarship aid, students must "actually reside" in on-campus facilities. Idaho Code §§ 33-4302 and 33-4032A. The majority of members of an insurer that operates only in the State of Idaho must "actually reside" in the state. I.C. § 41-2835(4). Idaho Code section 50-102, which provides for the manner in which cities may be incorporated, restricts signatures on an initiating petition to qualified electors who are "actual residents" of the territory proposed to be incorporated. An earlier version of this statute was interpreted by the Court in *Village of Ilo* *v. Ramey,* 18 Idaho 642, 648, 112 P. 126, 128 (1910). There, we equated the words "actual resident" with "inhabitant." An "inhabitant" is "a person who dwells or resides permanently in a place as distinguished from a transient lodger or visitor." Webster's, at 1163.

Some legislative history is also pertinent to our inquiry. Prior to 1967, Chapter 8, Title 1, Idaho Code, divided the state into eleven judicial districts. In 1967, Chapter 8 was repealed and re-enacted to provide for the seven judicial districts the state now has. 1967 Idaho Sess. Laws, ch. 51. The legislation established the resident chambers for all district judge positions and enacted Idaho Code § 1-809 in its present form. The short title of the legislation reads, in pertinent part, "PROVIDING FOR THE RESIDENT CHAMBERS OF DISTRICT JUDGES; REQUIRING A DISTRICT JUDGE RESIDE AT RESIDENT CHAMBERS." Former Idaho Code section 1-901, which was repealed in 1975 (1975 Sess. Laws, ch. 242), had provided that a district judge "may sit at chambers anywhere within his district." However, the new section 1-809 required district judges to "actually reside" at their resident chambers. It is rather clear the Legislature wanted district judges to live in the county where their resident chambers were located and to be a part of that community.

Virtually every district judge who has been appointed or elected since 1967 has understood that section 1-901 requires that him or her to really live in the county designated as resident chambers. Indeed, there is strong evidence in the record that Petitioner understood this to be the case when he ran for the Idaho County position. Petitioner testified that he bought a house in Grangeville, that he took out a homestead exemption on that house and still maintained the exemption as of the time of the Council hearing on December 17, 2008, and that he registered to vote in Idaho County. Petitioner would not have taken a homestead exemption and registered to vote in Idaho County unless he clearly understood that this county was to be his primary residence.

A district judge is "presumed to know the law." *State v. Leavitt,* 121 Idaho 4, 6, 822 P.2d 523, 525 (1991); *City of Lewiston v. Frary,* 91 Idaho 322, 327, 420 P.2d 805, 810 (1966). It necessarily follows that district judges must also comply with the law. Thus, we must assume that Petitioner understood the significance of obtaining and maintaining a homeowner's exemption and of voting in Idaho County.

Idaho Code section 63-602G(1) allows for the exemption of a person's homestead as that term is defined in Idaho Code section 63-701(2). A homestead is "the dwelling, owner-occupied by the claimant. . . . and used as the primary dwelling place of the claimant." I.C. § 63-701(2). Idaho Code section 63-602G(2)(a) specifies that the exemption may be granted only if the homestead is owner-occupied and used as the primary dwelling place of the owner. Subsection 2(c)(ii) requires the owner to certify to the county assessor that the homestead is his "primary dwelling place." Subsection 2(f) states that the definition of "primary dwelling place" is the same as that in Idaho Code section 63-701(8). The latter provision says the primary dwelling place is:

> the claimant's dwelling place on January 1 or before April 15 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 and:
>
> (i) At least six (6) months during the prior year; or
>
> (ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or
>
> (iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant for less than one (1) year.

Idaho Code section 63-701(6) defines "occupied" as meaning "actual use and possession." An owner need only apply once for homeowner's exemption, but must maintain eligibility on a yearly basis. I.C. § 63-602G(3). The current version of the homeowner's exemption was enacted in 2006. The earlier versions of the statute did not use the word homestead, but did require that the property be the primary dwelling place of the owner. Being a judicial officer, with full knowledge of the law, Petitioner would certainly not have applied for a homeowner's exemption on the Idaho County house unless he clearly understood that it was to be his primary dwelling place and that he was to maintain it as such for each subsequent year. Although one could certainly question his subsequent compliance with the foregoing statutes, that is a matter for pursuit, if any, by county officials (see Idaho Code section 63-602G(5), which empowers county officials to seek recovery of tax revenues lost to improperly claimed homeowner's exemptions) and not the subject of our present inquiry.

Unless Petitioner understood that Idaho County was to be and remain the location of his primary residence, he would not have registered to vote and continued to vote in that county. According to Idaho Code section 34-107:

> (1) Residence," for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence.
>
> * * *
>
> (4) A qualified elector shall not be considered to have gained a residence in any

> county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

Indeed, the registration form signed by Petitioner on October 16, 2003, states:

> UNDER PENALTY OF LAW: By signing this card, I certify that I am a citizen of the United States and that I shall have been a resident of Idaho and the county for 30 days before the next election at which I vote . . .

It is obvious that Petitioner would not have signed a false certificate and equally obvious that he understood Idaho County was to be his primary home and fixed habitation. Although the evidence indicates that his subsequent compliance with the voting requirements is less than ideal, that is a matter for other authorities.

One further fact demonstrates that Petitioner understood he was required to actually reside or really live in Idaho County. During his testimony at the Council hearing, he acknowledged having asked the Legislature to amend Idaho Code section 1-803 so he could reside in Clearwater County. If, as Petitioner has contended, he can actually reside in several different counties at the same time, there would be no need to obtain such a change in the law.

While it is clear that Petitioner initially understood he was required to live in Idaho County, the record reflects that he was not doing so during the period preceding the time he was interviewed by Hamlin. It is not clear from the record when Petitioner began using his Lewiston house as his primary residence. What is clear is that he was not complying with the residence requirements of Idaho Code sections 1-803 and 1-809 when these proceedings were initiated because he was living in Nez Perce County.

At some point Petitioner actually claimed Nez Perce County as his principal residence. This occurred when he registered his vehicles in Nez Perce County. The record does not clearly reflect when this occurred. Petitioner testified that as of December 17, 2008, his vehicles were registered in Nez Perce County. Idaho Code section 49-401B(5) provides in pertinent part:

> Every owner of a vehicle registered by a county assessor shall give his principal residence or domicile address to the assessor so that the proper county can be entered upon the registration. Failure to do so shall be unlawful. . . . For the purpose of vehicle registration, a person is an actual and permanent resident of the county in which he has his principal residence or domicile. A principal residence or domicile shall not be a person's workplace, vacation, or part-time residence.

It is not entirely clear how one might reconcile this inconsistent certification but, again, this is a matter for consideration by other authorities and not particularly pertinent to the present inquiry.

In sum, Petitioner is required pursuant to Idaho Code sections 1-803 and 1-809 to actually reside in Idaho County. That means he must maintain his primary residence in Idaho County, that he must be an inhabitant of Idaho County, and that he must really live in Idaho County. The evidence in the record indicates that he has not been actually residing in Idaho County for some time and this must change.

VIII. CONSTITUTIONAL DUTY

A number of times during these proceedings, commencing with his interview by Hamlin, Petitioner has contended that living in Idaho County interferes with his ability to carry out his constitutional duty. He does not identify the constitutional provision that would trump the statutory requirement that he reside in Idaho County. The argument displays a fundamental misunderstanding of the pertinent constitutional provisions.

While Idaho's judicial system is a separate branch of government, it depends upon the Legislature for funding. Article V, section 11 of the Idaho Constitution divides the state into five judicial districts but provides that "the legislature may reduce or increase the number of districts, district judges and district attorneys." The Legislature may use its power over the purse strings to fund a particular district judge position in a particular locale. It has chosen to do so by virtue of Idaho Code sections 1-803 and 1-809. For better or for worse, this is a political decision that is within the legislative prerogative. Those who are familiar with the political situation in the less populated counties of Idaho are aware of the jockeying that goes on when the Supreme Court notifies the Legislature of the need for an additional judge in a particular district and suggests where the same might be chambered. The Court certainly has the ability to suggest the proposed location where the district judge is most needed, but the Legislature takes the matter from there and the counties often enter into fierce competition to have the judge housed in their county, rather than the adjoining county. County residents have a strong interest in having a judge live and work in their community and the exact location where that will occur is a political decision conferred by the Constitution upon the Legislature. While the Legislature's decision as to which district judge position will be funded and where it will be located may not always coincide with what is ideal from an administrative standpoint, it is not for the courts to second guess or circumvent such decisions.

Once a district judge is appointed to live in a particular county, the Idaho Supreme Court exercises its constitutional responsibility to administer and supervise the work of the district judge. Art. V, § 2 of the Idaho Constitution provides that, "The courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court." As we stated in *Eismann v. Miller,* this provision "places the obligation and power to administer and supervise the judicial system of this state squarely upon the shoulders of this court." 101 Idaho at 697, 619 P.2d at 1150. The Idaho Supreme Court, being vested with power to administer and supervise the entire court system, is responsible for delineating the duties of district judges and specifying how those duties will be performed. Nothing in our constitutional system allows an individual district judge to determine, on his own, what his duties are and how they will be performed. Our constitutional system does not allow any district judge of this State to ignore specific statutory provisions by claiming them to be trumped by some undefined constitutional duty. No judge is above the law.

IX. VIOLATION OF CODE OF JUDICIAL CONDUCT AS GROUNDS FOR DISCIPLINE

The Council concluded:

> That District Judge John H. Bradbury's failure to actually reside in Idaho County, is wilful and is a violation of Idaho Code of Judicial Conduct Canon 1(A) and 2(A) and pursuant to Idaho Code § 1-2103, is wilful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into dispute.

Petitioner contends that a violation of the Code of Judicial Conduct cannot be a basis for discipline. He argues that grounds for discipline are limited to a violation of Idaho Code section 1-2103. That statute provides, in part, that a justice or judge may be disciplined or removed "for wilful misconduct in office . . . or conduct prejudicial to the administration of justice that brings judicial office into disrepute." This Court adopted the Code of Judicial Conduct to establish standards for ethical conduct by Idaho judges. A violation of the Code may constitute wilful misconduct in office or conduct prejudicial to the administration of justice that brings judicial office into disrepute. *Becker,* 122 Idaho at 293-94, 834 P.2d at 295-96. We point out, however, that when a petition has been filed in this Court to review the Council's determination, this Court decides whether the judge's conduct constitutes grounds for discipline.

While the Council determined that Petitioner's actions were in violation of the Code of Judicial Conduct, it recommended little in the way of disciplinary action. It did not censure the Petitioner or recommend that he be unconditionally deprived of his office. Rather, the Council adopted a no harm, no foul approach, recommending that he be suspended from acting as a district judge until he changed his place of actual residency to Idaho County. The Council recognized that no such suspension would take place unless ordered by the Court. The Council also recommended that Petitioner be required to pay the costs incurred by the Council in investigating and litigating the proceeding.

We find that it is appropriate to adopt a no harm, no foul approach in order to accomplish the objective of enforcing the legislative decision to locate Petitioner's position in Idaho County. Having determined that a common sense interpretation of "actually reside" requires that Petitioner establish and maintain his primary residence in Idaho County, we need not take the additional step of determining whether Petitioner violated the Code of Judicial Conduct. It would serve no purpose. Petitioner stated in the Council hearing and his attorney reiterated in his presentation to this Court that Petitioner would comply with this Court's determination as to where the Legislature required that he live. So long as Petitioner carries through with these representations, the matter will be satisfactorily resolved.

X. THE APPROPRIATE RESOLUTION

We hereby order that within twenty-one (21) days of the release of this opinion, Petitioner must (1) establish his primary residence in Idaho County and (2) submit to the Court an affidavit stating that he is actually residing in Idaho County and will continue to actually reside in Idaho County so long as he is required to do so by law. Upon Petitioner's compliance with this Order, we will not require that he reimburse the Council for its costs incurred in this matter. A final Order will issue upon fulfillment of these compliance terms. If compliance is not forthcoming within said 21-day period, we will revisit this Order.

Justices BURDICK and W. JONES, **CONCUR**.

KIDWELL, J. Pro Tem, dissenting in part:

Respectfully, I disagree with the majority Opinion's resolution (section X) of this matter and the analysis of the words actual residence (section VII).

Actual residence when required by a statute is more readily subjectively discussed, than objectively defined. Whether utilizing "common sense" or "clear meaning of the statute" or "intent of the drafters," it seems apparent that there must be some period of physical presence at a specific physical location. Further narrowing of the definition or historical analogies includes subjective determinations not in the record before us.

Judge Bradbury has two residences or homes in Idaho; one in Idaho County (Grangeville) and one in Nez Perce County (Lewiston). The relevant statute requires actual residence in Idaho County. However, having two or more homes in Idaho is not precluded.

It is important to note before addressing the residence issue, that neither the record presented or the majority opinion suggests any shirking of his job. On the contrary it appears that Judge Bradbury is dutifully carrying out the responsibilities to which he has been constitutionally elected.

The controversy arises here because the Judicial Council raised the question of whether the judge actually resides in Grangeville because he spends approximately one or two days a week at his home there. Judge Bradbury testified in deposition that he spends more time on the road or at his home in Lewiston than at his home in Grangeville, because of the duties and demands of traveling throughout his judicial district.

The record indicates that Judge Bradbury, upon being elected as District Judge, purchased a home in Grangeville (he had owned a ranch in the county in previous years). Subsequently he took out a homeowner's exemption and signed the requisite forms indicating his intent to make that his primary home. He also began voting from Grangeville, and he pays taxes and gets his judicial mail in Grangeville.

Based on the conflicting and limited information presented, I am unable to conclude that Judge Bradbury is in violation of Idaho's residency requirement statute. This matter should be dismissed at this time, but without prejudice to the Judicial Council's right to proceed with additional information if it decides to do so.

In the Supreme Court of the State of Idaho

IN THE MATTER OF THE INQUIRY CONCERNING DISTRICT JUDGE JOHN H. BRADBURY.

IDAHO JUDICIAL COUNCIL,

Petitioner,

v.

JOHN H. BRADBURY,

Respondent.

RECUSAL

Supreme Court
Docket No.
36175-2009
Judicial Council
No. 2007-99

There is currently pending in the Idaho Supreme Court a petition by Judge John H. Bradbury challenging the determination by the Idaho Judicial Council that he has violated the Code of Judicial Conduct by refusing to comply with the law that requires him to actually reside in Idaho County. In his petition, Judge Bradbury contends that he is entitled to know the name of the person(s) who reported to the Judicial Council that he was not complying with that law. He has filed a federal lawsuit against the justices presiding over his petition in the Idaho Supreme Court, and seeks to use the federal lawsuit as a vehicle to obtain information from the Judicial Council, undoubtedly including the name(s) of the person or persons who reported his violation to the

Judicial Council: The only reason for obtaining that information would be retaliation. The Supreme Court must make its own factual findings based upon the evidence in the record, and because such person(s) did not testify, whatever information they provided is not in the record, is unknown to the members of the Court, and cannot be a basis for any findings by the Court.

The basis of the federal lawsuit is that I am both the chair of the Judicial Council and Chief Justice of the Idaho Supreme Court, although because I was in the hospital at the time, I was not present at and did not participate in Judge Bradbury's hearing before the Council, nor did I discuss the Council's findings and recommendations with other members of the Council. Judge Bradbury even admits he has no claim that I am actually biased against him. If Judge Bradbury is permitted to obtain such name(s) during discovery in the federal lawsuit, such person(s) could be subject to retaliation and it could have a chilling effect on others who may desire to report possible violations of the law by members of the judiciary. Therefore, I hereby recuse myself from Supreme Court Case No. 36175-2009.

DATED this 7 day of August 2009.

/s/ Daniel T. Eismann
Daniel T. Eismann
Chief Justice

cc: Council [sic] of Record

In the Supreme Court of the State of Idaho

IN THE MATTER OF THE INQUIRY CONCERNING DISTRICT JUDGE JOHN H. BRADBURY.	ORDER
IDAHO JUDICIAL COUNCIL, Petitioner, v. JOHN H. BRADBURY, Respondent.	Supreme Court Docket No. 36175-2009 Judicial Council No. 2007-99

A PETITION FOR EXTRAORDINARY RELIEF/ MOTION FOR RECONSIDERATION and MEMORANDUM IN SUPPORT were filed by counsel for Respondent on June 18, 2009, Thereafter, a RESPONSE TO PETITION FOR EXTRAORDINARY RELIEF/MOTION FOR RECONSIDERATION was filed by counsel for Petitioner on June 25, 2009. Subsequently, Respondent filed a REPLY TO RESPONSE TO PETITION FOR EXTRAORDINARY RELIEF/ MOTION FOR RECONSIDERATION on July 2, 2009. The Court is fully advised; therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondent's PETITION FOR EXTRAORDINARY RELIEF/ MOTION FOR RECONSIDERATION filed in this Court on June 18, 2009 be, and hereby is, DENIED, and the determination of residency will be made on the existing public record, not upon any evidence sought to be discovered by Respondent.

DATED this 9th day of July 2009.

By Order of the Supreme Court

/s/ Stephen Kenyon
Stephen W. Kenyon, Clerk

cc: Council [sic] of Record

In the Supreme Court of the State of Idaho

IN THE MATTER OF THE INQUIRY CONCERNING DISTRICT JUDGE JOHN H. BRADBURY.	ORDER
IDAHO JUDICIAL COUNCIL, Petitioner, v. JOHN H. BRADBURY, Respondent.	Supreme Court Docket No. 36175-2009 Judicial Council No. 2007-99 Ref. No. *(per Oral Conference held 5/27/09)*

1. A Motion to Continue Hearing and MOTION FOR ORDER REQUIRING IDAHO JUDICIAL COUNCIL TO PRODUCE DOCUMENTS with AFFIDAVIT OF MICHAEL E. McNICHOLS were filed by counsel for Respondent on May 1, 2009.

2. On May 4, 2009, this Court issued an Order that the Idaho Judicial Council shall file a Response to Respondent's Motion for Production of Documents within fourteen (14) days.

3. A REPLY BRIEF IN SUPPORT OF VERIFIED PETITION FOR REVIEW OF JUDICIAL COUNCIL RECOMMENDATIONS was filed by counsel for Respondent on May 7, 2009.

4. A RESPONSE TO MOTION TO CONTINUE HEARING AND TO REQUIRE PRODUCTION OF DOCUMENT was filed by Special Examiner R. Keith Roark, Idaho Judicial Council, on May 12, 2009.

5. A REPLY MEMORANDUM IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF DOCUMENTS was filed by counsel for Respondent on May 21, 2009.

The Court is fully advised; therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondent's MOTION FOR ORDER REQUIRING IDAHO JUDICIAL COUNCIL TO PRODUCE DOCUMENTS be, and hereby is, DENIED.

IT FURTHER IS ORDERED that ORAL ARGUMENT in this matter SHALL BE SET FOR FRIDAY, JUNE 19, 2009, AT 2:00 P.M. at the Supreme Court Building in Boise, Idaho. Further, the hearing shall be a total of sixty (60) minutes in length with counsel for Respondent arguing first.

DATED this 28th day of May 2009.

By Order of the Supreme Court

/s/ Stephen Kenyon
Stephen W. Kenyon, Clerk

cc: Council [sic] of Record

BEFORE THE IDAHO JUDICIAL COUNCIL
STATE OF IDAHO

Inquiry Concerning DISTRICT JUDGE JOHN H. BRADBURY	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS**

A hearing was held on December 17, 2008, on the formal charges filed against District Judge John H. Bradbury by the Idaho Judicial Council. District Judge John H. Bradbury appeared in person and through his attorney, Michael E. McNichols of the firm of Clements, Brown & McNichols, P.A. The Special Examiner, R. Keith Roark of The Roark Law Firm, appeared to present evidence on the charges.

After considering all of the pleadings, evidence, briefs of counsel and oral argument, the Idaho Judicial Council makes the following Findings of Fact, Conclusions of Law and Recommendations:

FINDINGS OF FACT

1. On May 2, 2006, notice was given to District Judge John H. Bradbury that the Judicial Council, on its own motion, was conducting an initial inquiry into the issue of whether he actually resided in Idaho County as required by statute.

2. On May 4, 2006, Judge Bradbury responded to the Judicial Council's initial inquiry. His response, admitted as Exhibit 19, stated that he owned a

furnished home in Grangeville, that he had a Homeowners Exemption on the residence, that he voted as a resident of Idaho County, that he receives his court mail at Grangeville, and, that he stays where his work is. He did not inform the Judicial Council that he spent practically none of his nights in Grangeville, or, that in the prior six (6) months he had spent fewer than ten (10) evenings in Grangeville.

3. On April 18, 2007, the Judicial Council informed Judge Bradbury that it had reviewed the information available and was closing its file on the matter.

4. On September 12, 2007, the Judicial Council informed Judge Bradbury and gave him notice that the Judicial Council had reopened its file and was conducting a preliminary investigation into the issue of whether he actually resided in Idaho County as required by statute.

5. On July 22, 2008, a Notice of Charges was filed.

6. On December 17, 2008, a hearing on the formal charges was held before the Idaho Judicial Council at the Supreme Court Building in Boise, Idaho. District Judge Ronald J. Wilper served as the presiding member. Chief Justice Daniel T. Eismann and Judicial Council member Anne Solomon were not present.

7. In 2002, District Judge John H. Bradbury was elected to serve as a District Judge in the Second

Judicial District with chambers in Idaho County, Idaho. Judge Bradbury admitted that Idaho Code § 1-803 established his resident chambers in Idaho County and that pursuant to Idaho Code § 1-809, he is required to actually reside in Idaho County.

8. Judge Bradbury owned a home in Lewiston, Nez Perce County, Idaho prior to being elected to the position of district judge in 2002. After his election, in December 2002, Judge Bradbury purchased a home in Grangeville, Idaho. He claimed a Homeowners Exemption on the Grangeville home.

9. Following his election and as recently as July 2008, Judge Bradbury has attempted to obtain a change in Idaho Code § 1-803 so that the resident chambers for his position could be in either Idaho County, Clearwater County or Lewis County. Judge Bradbury elicited the support of his fellow District Court Judges, the Administrative District Judges, and county officials in Clearwater County and Idaho County to support such a change. He also attempted to obtain the support of the Idaho Supreme Court to have the statute changed.

10. Judge Bradbury generally hears cases in Clearwater County on Monday and Tuesday, Lewis County on Wednesday, Idaho County on Thursday, and either Clearwater, Nez Perce or Latah County on Friday. His work in Grangeville can be accomplished in less than one-half (½) day although sometimes he does stay for the full day or hold Drug Court at 4:00.

11. Unless Judge Bradbury has a trial in Grangeville, he does not stay in Grangeville overnight and spends most of time in Lewiston. In response to a question in the interview with the Executive Director on October 31, 2007, admitted as Exhibit B, about how many evenings a week he spends in Grangeville, Judge Bradbury stated "practically none." Judge Bradbury admitted that in the six (6) months preceding October, 2007, he spent less than ten (10) nights in Grangeville.

12. Judge Bradbury's motor vehicles are registered in Nez Perce County. He is registered to vote in Idaho County and has voted in national and state elections in Idaho County but has not voted in city elections in Idaho County. Judge Bradbury receives most of his personal mail in Lewiston and some in Grangeville. He receives mail for car insurance and tax returns in Lewiston. His physician is in Lewiston.

13. Judge Bradbury feels that he cannot do his work and live in Grangeville because of the time required to travel to Lewis County and Clearwater County and on occasion to Nez Perce County and Latah County.

14. Judge Bradbury is aware of the statutory requirement that he actually reside in Idaho County. In the transcript of the interview with the Executive Director on October 31, 2007, admitted as Exhibit B, page 13, line 18, Judge Bradbury stated "and I want to do my job, and I want to comply with the law, but I can't do both as much as I want to.". He continued on

page 17, line 9, stating "where do I physically reside? Where am I physically most of the time? I'm in Lewiston, because I can't do my job unless I am." On page 20 of the transcript Judge Bradbury states, "I can tell you that I would live in Grangeville if I could do my work and live in Grangeville."

15. Judge Bradbury submits Travel Reimbursement Vouchers to the Idaho Supreme Court. On approximately fifty-eight (58) occasions, the Travel Voucher submitted to the Supreme Court stated that the trip originated in Grangeville when it did not actually originate in Grangeville. Judge Bradbury instructed his clerk to prepare his Travel Vouchers generally using Grangeville as the originating point even if his travels originated other than in Grangeville. He claimed that the mileage for which he claimed reimbursement was one-half (½) of the actual miles he traveled. Submitting Travel Reimbursement Vouchers with Grangeville as the origination point makes it appear that Judge Bradbury was actually residing in Idaho County.

16. Judge Bradbury's clerk testified that he is generally in Grangeville on Thursdays and is able to get his work completed in less than a day although at times the calendar is more crowded. When the clerk needs to contact Judge Bradbury or fax him documents other than at a court location, she will fax them to his house in Lewiston.

CONCLUSIONS OF LAW

The Judicial Council finds, by clear and convincing evidence and concludes as a matter of law;

1. That District Judge John H. Bradbury is required to actually reside in Idaho County pursuant to Idaho Code §§ 1-803 and 1-809.

2. That District Judge John H. Bradbury does not actually reside in Idaho County.

3. That District Judge John H. Bradbury's failure to actually reside in Idaho County, is wilful and is a violation of Idaho Code of Judicial Conduct Canon 1(A) and 2(A) and pursuant to Idaho Code § 1-2103, is wilful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into dispute.

4. The Judicial Council makes no conclusions concerning District Judge John H. Bradbury's travel voucher submissions.

RECOMMENDATIONS

Based upon the Findings of Fact and Conclusions of Law, the Idaho Judicial Council recommends to the Idaho Supreme Court as follows:

1. That District Judge John H. Bradbury be immediately suspended from serving as a District Judge until such time as he actually resides in Idaho County.

2. That if District Judge John H. Bradbury actually resides in Idaho County, that he be required to submit monthly affidavits to the Supreme Court certifying that he actually resides in Idaho County.

3. That District Judge John H. Bradbury be required to pay the costs of the Special Examiner appointed by the Idaho Judicial Council, and the costs of the hearing on the formal charges.

DATED this 25th day of February, 2009.

/s/ J. Philip Reberger
Certified by: J. Philip Reberger, Secretary
Idaho Judicial Council

For the Judicial Council with the concurrence of Sherry Krulitz, William Parsons, Ronald J. Wilper, J. Philip Reberger and Ronald Nate

---

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of February, 2009, I caused a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** to be served by the method indicated below, and addressed to the following:

Michael E. McNichols
Clements, Brown
& McNichols, P.A.
321 13th Street
P.O. Box 1510
Lewiston, Idaho 83501
Attorney for
Judge Bradbury

___ U.S. Mail,
Postage Prepaid
___ Hand Delivered
___ Federal Express
___ Fax Transmission

R. Keith Roark
Roark Law Firm
409 N. Main Street
Hailey, Idaho 83333
Special Examiner

___ U.S. Mail,
Postage Prepaid
___ Hand Delivered
___ Federal Express
___ Fax Transmission

/s/ J. Philip Reberger
J. Philip Reberger

BEFORE THE IDAHO JUDICIAL COUNCIL
STATE OF IDAHO

Inquiry Concerning DISTRICT JUDGE JOHN H. BRADBURY	**ORDER DENYING MOTION TO DISMISS CHARGES AND ORDER DENYING MOTION FOR RECONSIDERATION OF MOTION TO CONTINUE**

On December 17, 2008, at the time set for the hearing on the formal charges, District Judge John H. Bradbury, by and through his attorney of record, Michael E. McNichols, moved to dismiss the charges against Judge Bradbury on the grounds that violating the Idaho Code of Judicial Conduct is not a basis upon which the legislature authorized the Judicial Council to take disciplinary action, moved to dismiss the charges relating to travel vouchers on the grounds that the charges relating to such travel vouchers were not included in the Notice of Preliminary Investigation, and moved for reconsideration of the Judicial Council denial of the Motion To Continue Hearing.

The Judicial Council considered the Hearing Briefs submitted by District Judge John H. Bradbury, the Special Examiner's response to the Hearing Brief and the oral argument on the matters;

NOW, THEREFORE, the Motions to Dismiss Charges and the Motion For Reconsideration of Motion to Continue are hereby DENIED.

DATED this 25th day of February, 2009.

/s/ J. Philip Reberger
J. Philip Reberger, Secretary
Idaho Judicial Council

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of February, 2009, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Michael E. McNichols
Clements, Brown & McNichols, P.A.
321 13th Street
P.O. Box 1510
Lewiston, Idaho 83501
Attorney for Judge Bradbury

___ Service Through Special Examiner
X U.S. Mail
___ Hand Delivered
___ Federal Express
___ Fax Transmission 208-746-0753

R. Keith Roark
Special Examiner
409 N. Main Street
Hailey, Idaho 83333

X U.S. Mail
___ Hand Delivered
___ Federal Express
___ Fax Transmission 208-788-3918

/s/ J. Philip Reberger
J. Philip Reberger

BEFORE THE IDAHO JUDICIAL COUNCIL
STATE OF IDAHO

Inquiry Concerning DISTRICT JUDGE JOHN H. BRADBURY	**ORDER DENYING MOTION FOR CONTINUANCE AND MOTION FOR ORDER REQUIRING PRODUCTION OF DOCUMENTS**

The Idaho Judicial Council, having considered the Motion to Continue Hearing on Formal Charges and Motion For Order Requiring Production of Documents dated December 5, 2008, filed by and on behalf of District Judge John H. Bradbury, and having considered all of the arguments and authorities presented by District Judge John H. Bradbury, and the timeliness of the motion,

NOW, THEREFORE, the Motion to Continue Hearing on Formal Charges and Motion For Order Requiring Production of Documents are hereby DENIED.

DATED this 10th day of December, 2008.

/s/ J. Philip Reberger
J. Philip Reberger, Secretary
Idaho Judicial Council

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of December, 2008, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Michael E. McNichols
Clements, Brown & McNichols, P.A.
321 13th Street
P.O. Box 1510
Lewiston, Idaho 83501
Attorney for Judge Bradbury

___ Service Through Special Examiner
X U.S. Mail
___ Hand Delivered
___ Federal Express
X Fax Transmission 208-746-0753

R. Keith Roark
Special Examiner
409 N. Main Street
Hailey, Idaho 83333

X U.S. Mail
___ Hand Delivered
___ Federal Express
X Fax Transmission 208-788-3918

/s/ J. Philip Reberger
J. Philip Reberger

MICHAEL E. MCNICHOLS (ISB #993)
CLEMENTS, BROWN & McNICHOLS, P.A.
Attorneys at Law
321 13th Street
Post Office Box 1510
Lewiston, Idaho 83501
(208) 743-6538
(208) 746-0753 (Facsimile)

JOHN L. RUNFT (ISB #1059)
JON M. STEELE (ISB #1911)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Phone: (208) 333-8506
Fax: (208) 343-3246
Email: jlrunft@runftlaw.com

M. KARL SHURTLIFF (ISB # 1213)
Attorney at Law
800 West State Street, Suite 200
P.O. Box 1652
Boise, Idaho 83701-1652
Telephone (208) 343-2900
Facsimile (208) 343-3282

Attorneys for Honorable John H. Bradbury

IN THE SUPREME COURT OF THE STATE OF IDAHO

In the matter of:) Supreme Court
) No. 36175-2009
THE INQUIRY CON-)
CERNING DISTRICT) Judicial Council
JUDGE JOHN H. BRADBURY) No. 2007-99
)
) **RESPONDENT'S**
IDAHO JUDICIAL COUNCIL,) **MOTION TO DISQUALIFY JUSTICE**
Petitioner,) **JIM JONES**
)
v.)
JOHN H. BRADBURY,)
Respondent.)

COMES NOW Respondent, the Honorable John H. Bradbury, and pursuant to Canon 3E(1)(a) of the Idaho Code of Judicial Conduct, Idaho Appellate Rule 48, and by reference of Idaho Rule of Civil Procedure 40(d)(2) and respectfully moves herein the disqualification of the Honorable Justice Jim Jones from presiding in the above entitled matter on the grounds that there exists an unconstitutional "potential" for bias arising from his personal knowledge of disputed evidentiary facts outside of the record on appeal before this Court, which personal knowledge might reasonably, from the objective standpoint,[1] affect his

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[1] The objective standard for bias or impartiality implementing the Due Process Clause do not require proof of actual bias. *See, Caperton, et al. v. A.T. Massey Coal Co., Inc.*, 556 U.S.

(Continued on following page)

impartiality in these proceedings. The probability of such personal knowledge arises from his participation in conferencing herein with the other Justices, including Chief Justice Eismann, regarding these proceedings prior to the hearing on the merits July 22, 2009, including issues regarding whether Judge Bradbury was entitled to information from the Idaho Judicial Council regarding the charges against him.

Justice Eismann has recused himself in these proceedings on appeal, claiming in his Recusal filed on August 7, 2009, that "The only reason for obtaining that information would be retaliation." Respondent makes no claim of actual or intentional bias. Rather, he respectfully asserts that the fact of said conferencing in this matter in conjunction with Justice Eismann's Recusal, the averments in his Recusal, and in light of the record herein, support Respondent's claim of objective bias or impartiality in violation of his due process rights under the Fourteenth and Fifth Amendments to the United States Constitution and of Canon 3E(1)(a) of the Idaho Code of Judicial Conduct.

This Motion is supported by a brief and the Affidavit of John L. Runft filed contemporaneously herewith.

___ (2009), United States Supreme Court No. 08-92, decided June 8, 2009, at p. 13; *Etna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 820, 832-833 (1986); *Mayberry v. Pennsylvania*, 400 U.S. 455, 465-466 (1971); *In re Murchison*, 349 U.S. 133, 136 (1955); *Tumey v. Ohio*, 273 U.S. 510, 532 (1927).

DATED this 20th day of August 2009.

RUNFT & STEELE LAW OFFICES, PLLC

By: ______________________________
JOHN L. RUNFT
Attorney for Respondent

MICHAEL E. MCNICHOLS (ISB #993)
CLEMENTS, BROWN & McNICHOLS, P.A.
Attorneys at Law
321 13th Street
Post Office Box 1510
Lewiston, Idaho 83501
(208) 743-6538
(208) 746-0753 (Facsimile)

JOHN L. RUNFT (ISB #1059)
JON M. STEELE (ISB #1911)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Phone: (208) 333-8506
Fax: (208) 343-3246
Email: jlrunft@runftlaw.com

M. KARL SHURTLIFF (ISB # 1213)
Attorney at Law
800 West State Street, Suite 200
P.O. Box 1652
Boise, Idaho 83701-1652
Telephone (208) 343-2900
Facsimile (208) 343-3282

Attorneys for Honorable John H. Bradbury

IN THE SUPREME COURT OF THE STATE OF IDAHO

In the matter of: THE INQUIRY CONCERNING DISTRICT JUDGE JOHN H. BRADBURY	Supreme Court No. 36175-2009 Judicial Council No. 2007-99
IDAHO JUDICIAL COUNCIL, Petitioner, v. JOHN H. BRADBURY, Respondent.	**AFFIDAVIT OF JOHN L. RUNFT IN SUPPORT OF RESPONDENT'S MOTION TO DISQUALIFY JUSTICE JIM JONES**

STATE OF IDAHO)
: ss
County of Ada)

COMES NOW, John L. Runft, being over the age of eighteen years and competent to make this Affidavit, after first being duly sworn, and upon his own personal knowledge, states as follows:

A. I am counsel for the Respondent, John H. Bradbury, in the above case and make this statement in Support of Respondent's Motion to Disqualify Justice Jim Jones.

B. Except for the Affidavit of Chief Justice Eismann (filed in *Bradbury v. Eismann, et al*, U.S. Dist. Ct., Case No. CV 09-352-BLW, all of the documents listed in, and attached hereto as exhibits to this affidavit are true and correct copies of documents that have been filed in these proceedings filed herein either at the appellate level (referenced by date) or filed as part of the record on appeal (referenced by "R" and page number). These documents are here presented for ready reference in support of Respondent's Motion to Disqualify.

C. Said Exhibits are as follows:

Exh. 1	Recusal of Chief Justice Eismann in Idaho Supreme Court Case No. 36175-2009 (dated August 7, 2009).
Exh. 2	Objection to Entry of Recusal Order in Idaho Supreme Court Case No. 36175-2009 (dated August 10, 2009).
Exh. 3	Affidavit of Chief Justice Eismann, Exhibit 1 to Defendants' Memorandum in Opposition to Plaintiff's Motion for Temporary Restraining Order, etc, filed on July 27, 2009 in the case *Bradbury v. Eismann, et al*, U.S. Dist. Ct., Case No. CV 09-352-BLW.
Exh. 4	True and correct certified copy of the Conference Minutes of the Idaho Supreme Court, Case No. 36175-2009. (dates indicated in the Exhibit).
Exh. 5	True and correct copy of the Order Denying Petition for Extraordinary Relief/Motion for Reconsideration. (Dated July 9, 2009)

Exh. 6	Letter dated 05-02-06 from the Idaho Judicial Council ("ITC") to Judge Bradbury notifying him of an *initial inquiry* as to whether he actually resides in Idaho County. (R., p. 170, Def's Exh. 18)
Exh. 7	Idaho Judicial Council Rules 28-31. (R., p. 127, Def's Exh. 2). (Note: this copy is from the IJC website in order to obtain a more legible rendition of said rules.)
Exh. 8	Letter dated 05-04-06, from Judge Bradbury to the IJC containing Judge Bradbury's response to the initial inquiry. (R., p. 171, Def's Exh. 19)
Exh. 9	IJC letter dated 04-18-07 to Judge Bradbury "closing its file on the matter." (R., p. 172, Def's Exh. 20)
Exh. 10	Letter dated 09-12-07 from the IJC to Judge Bradbury giving him notice that the Judicial Council "has received additional information" regarding whether he actually resides in Idaho County and has reopened its file to "conduct a *preliminary investigation* into the matter." (R., p. 173, Def's Exh. 21)
Exh. 11	Letter dated 01-22-08 from the IJC to Judge Bradbury giving him notice that "formal charges" will be brought against him and the matter

	scheduled for hearing. (R., p. 175, Def's Exh. 22)
Exh. 12	Letter from attorney Keith Roark to Judge Bradbury's attorney, Mike McNichols, stating, *inter alia*, "the Council feels strongly that John Bradbury's refusal to obey the relevant statute . . . cannot be mediated away as if it never happened." (R., p. 177, Def's Exh. 23)
Exh. 13	Excerpt from a letter from the IJC to Judge Bradbury dated December 9, 2004, regarding an initial inquiry pursuant to a complaint to the IJC about Judge in which the complainant, one Rich Bellon, is disclosed. (R., p. 210, Def's Exh 30)
Exh. 14	Excerpt from a letter from the IJC to Judge Bradbury dated March 18, 2008, regarding an initial inquiry pursuant to a complaint to the IJC about Judge in which the complainant, attorney Merrily Munther is disclosed. (R., p. 212, Def's Exh. 31)

Further your affiant sayeth naught.

DATED this 20th day of August 2009.

RUNFT & STEELE LAW OFFICES, PLLC

By: ______________________________
JOHN L. RUNFT
Attorney for Respondent

STATE OF IDAHO)
: ss
County of Ada)

SUBSCRIBED AND SWORN unto me this 20th day of August 2009.

____
Notary Public for the
State of Idaho
Residing at:
My Commission Expires:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of January 2010, a true and correct copy of the foregoing **AFFIDAVIT OF JOHN L. RUNFT IN SUPPORT OF RESPONDENT'S MOTION TO DISQUALIFY JUSTICE JIM JONES** was served upon opposing counsel as follows:

Robert Hamlin
Idaho Judicial Council
PO Box 1397
Boise, ID 83701

___ US Mail
___ Personal Delivery
___ Facsimile

R. Keith Roark
The Roark Law Firm
409 N. Main Street
Hailey, ID 83333

___ US Mail
___ Personal Delivery
___ Facsimile

Michael E. McNichols
Clements, Brown & McNichols, PA
PO Box 1510
Lewiston, ID 83501

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M. Karl Shurtliff
Attorney at Law
800 W. State Street, Suite 200
P.O. Box 1652
Boise, ID 83701-1652

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JAMES D. CARLSON
BRIAN C. WONDERLICH,
Deputy Attorneys General
Statehouse, Room 210
P.O. Box 83720
Boise, ID 83720-0010

___ US Mail
___ Personal Delivery
___ Facsimile

RUNFT & STEELE LAW OFFICES, PLLC

By:______________________________
JOHN L. RUNFT
Attorney for Respondent

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

HON. JOHN H. BRADBURY, Plaintiff, vs. CHIEF JUSTICE DANIEL T. EISMANN, an individual; JUSTICE ROGER S. BURDICK, an individual; JUSTICE JIM JONES, an individual; JUSTICE WARREN E. JONES, an individual; and JUSTICE WAYNE L. KIDWELL, an individual, Defendants.	Case No. CV 09-352-S-BLW **AFFIDAVIT OF CHIEF JUSTICE EISMANN**

State of Idaho)
) ss.
County of Ada)

Chief Justice Daniel T. Eismann, being first duly sworn on oath, deposes and says:

1. On August 1, 2007, I became Chief Justice of the Idaho Supreme Court and Chair of the Judicial Council.

2. As Chair, I do not vote on any matters that come before the Judicial Council except to break a tie. That during the time I have been on the Council, it has never been necessary for me to break a tie vote,

and therefore I have not voted on any matter that has come before the Council, including any matter involving the Hon. John H. Bradbury.

3. I have no knowledge of the prior Judicial Council investigation regarding Judge Bradbury, except what I have read in the transcript of the hearing that was held on December 17, 2008.

4. To my recollection, the decision to conduct an initial inquiry that resulted in the filing of formal charges against Judge Bradbury that are the subject of this case was made before I became a member of the Judicial Council.

5. I did not participate in the evidentiary hearing held on December 17, 2008, involving Judge Bradbury, I did not participate in any discussions or deliberations regarding that hearing, nor was I present during any such discussions or deliberations by other members of the Judicial Councils. I was in St. Luke's hospital from December 9, 2008, through December 29, 2008, receiving six days of high dose chemotherapy, an infusion of stem cells, and recovering from the side effects of the chemotherapy.

6. I did not participate in the Judicial Council's decision that Judge Bradbury has appealed to the Idaho Supreme Court.

7. I have not discussed the Judicial Council's findings and recommendation regarding Judge Bradbury with other members of the Judicial Council,

nor have I discussed them with R. Keith Roark who was counsel for the Judicial Council.

8. The hearing on Judge Bradbury's appeal is scheduled for July 22, 2009, at 3:00 p.m. The issues raised by Judge Bradbury in that appeal are:

> a. Whether the Judicial Council has statutory authority to recommend discipline for a violation of the Code of Judicial Conduct,
>
> b. Whether the Judicial Council should be required to disclose the identity of whoever prompted this investigation, even if that person did not testify at the hearing.
>
> c. Whether the Judicial Council should have dismissed Counts 2 and 4 (dealing with travel vouchers), even though the Council made no conclusions or recommendations regarding those counts.
>
> d. Whether the Judicial Council wrongfully failed to produce documents requested by Judge Bradbury.
>
> e. Whether the record shows that the Judicial Council had pre-judged charges against Judge Bradbury.
>
> f. Whether Idaho Code § 1-809 is unconstitutionally vague in requiring that district judges "shall actually reside at the place designated as resident chambers."
>
> g. Whether the Judicial Council's finding that "District Judge John H. Bradbury's failure

to actually reside in Idaho County, is wilful" is supported by the evidence.

9. I obviously cannot predict how the Court will decide any of those issues, or when a decision will be made, but the median number of days for decisions by the Court is 56 days after oral argument.

10. If the Court upholds the findings by the Judicial Council, then the Court will have to decide what remedy is appropriate.

/s/ Daniel T. Eismann
Chief Justice
Daniel T. Eismann, Affiant

Subscribed and sworn to before me, the undersigned Notary Public, on July 21, 2009.

/s/ Robin F. Reider
Robin F. Reider,
Notary Public for Idaho

[STAMP]

My Commission Expires: 2-5-13

DISPOSITION MEMO **Clerk**

Reference Number: **09-287**

Distributed to: **EISMANN, BURDICK, J. JONES, W. JONES, PRO TEM-Kidwell**

#36175

Case Name: **IDAHO JUDICIAL COUNCIL V. BRADBURY**

PETITION FOR EXTRAORDINARY RELIEF/MOTION FOR RECONSIDERATION.

DENY PETITION. THE DETERMINATION OF RESIDENCY WILL BE MADE ~~DETERMINED~~ ON EXISTING RECORD, NOT UPON ANY EVIDENCE SOUGHT FOR BE DISCOVERED BY APPELLANT.

/s/ Jim Jones
Justice Jim Jones

6/25/09
Date of Recommendation

RESPONSE

APPROVE:	DISAPPROVE:	TO CONFERENCE
TODAY'S DATE:	JUSTICE:	
COMMENTS	I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the dispo entered in the above entitled cause and now on record in my office.	

WITNESS my hand and the Seal of this Court 7-16-09

STEPHEN W. KENYON Clerk

By: /s/ [Illegible] Chief Deputy

DISPOSITION MEMO **Burdick**

Reference Number:	**09-287**
Distributed to:	**EISMANN, BURDICK, J. JONES, W. JONES, PRO TEM**
	#36175
Case Name:	**IDAHO JUDICIAL COUNCIL V. BRADBURY**

PETITION FOR EXTRAORDINARY RELIEF/MOTION FOR RECONSIDERATION.

DENY PETITION. THE DETERMINATION OF RESIDENCY WILL BE MADE ~~DETERMINED~~ ON EXISTING RECORD, NOT UPON ANY EVIDENCE SOUGHT TO BE DISCOVERED BY APPELLANT.

/s/ Jim Jones
Justice Jim Jones

6/25/09
Date of Recommendation

RESPONSE

APPROVE: RB	DISAPPROVE:	TO CONFERENCE
TODAY'S DATE: 6-26-09	JUSTICE:	
COMMENTS	I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the dispo entered in the above entitled cause and now on record in my office.	

WITNESS my hand and the Seal of this Court 7-16-09

STEPHEN W. KENYON Clerk

By: /s/ [Illegible] Chief Deputy

DISPOSITION MEMO **Eismann**

Reference Number:	**09-287**
Distributed to:	**EISMANN, BURDICK, J. JONES, W. JONES, PRO TEM**
	#36175
Case Name:	**IDAHO JUDICIAL COUNCIL V. BRADBURY**

PETITION FOR EXTRAORDINARY RELIEF/MOTION FOR RECONSIDERATION

DENY PETITION. THE DETERMINATION OF RESIDENCY WILL BE MADE ~~DETERMINED~~ ON EXISTING RECORD, NOT UPON ANY EVIDENCE SOUGHT TO BE DISCOVERED BY APPELLANT.

/s/ Jim Jones
Justice Jim Jones

6/25/09
Date of Recommendation

RESPONSE

APPROVE: X	DISAPPROVE:	TO CONFERENCE
TODAY'S DATE: 9-29-09	JUSTICE: [Illegible]	
COMMENTS	I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the dispo entered in the above entitled cause and now on record in my office.	

WITNESS my hand and the Seal of this Court 7-16-09

STEPHEN W. KENYON Clerk

By: /s/ [Illegible] Chief Deputy

DISPOSITION MEMO **W. Jones**

Reference Number:	**09-287**
Distributed to:	**EISMANN, BURDICK, J. JONES, W. JONES, PRO TEM** **#36175**
Case Name:	**IDAHO JUDICIAL COUNCIL V. BRADBURY**

PETITION FOR EXTRAORDINARY RELIEF/MOTION FOR RECONSIDERATION

DENY PETITION. THE DETERMINATION OF RESIDENCY WILL BE MADE ~~DETERMINED~~ ON EXISTING RECORD, NOT UPON ANY EVIDENCE SOUGHT TO BE DISCOVERED BY APPELLANT.

/s/ Jim Jones
Justice Jim Jones

6/25/09
Date of Recommendation

RESPONSE

APPROVE: WEJ	DISAPPROVE:	TO CONFERENCE
TODAY'S DATE: 6-25-09	JUSTICE: Warren Jones	
COMMENTS	I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the dispo entered in the above entitled cause and now on record in my office.	

WITNESS my hand and the Seal of this Court 7-16-09

STEPHEN W. KENYON Clerk

By: /s/ [Illegible] Chief Deputy

FINAL MINUTES
For
ORAL CONFERENCE
And
CASE & ADMINISTRATIVE MATTERS
Wednesday, May 27, 2009 at 9:00 a.m.

Case Conference was held on Wednesday, May 27, 2009 at 9:00 a.m. Present were Chief Justice Eismann, Justice Burdick, Justice J. Jones, Justice W. Jones, Justice Horton, Justice Walters, Justice Trout, Patti Tobias, Corrie Keller, Roland Gammill, Michael Henderson and Steve Kenyon.

A. DISPOSITION MEMOS

1. *Wisdom v. Ryan*, S. Ct. 36464
   Dispo. No. 09-200

   DENY (5-0)

2. *Doe I v. Doe III (Heiss v. Conti)*, S. Ct. 36386
   Dist. No. 09S-172

   APPROVE (5-0), VACATE STAY.

B. PETITIONS FOR REVIEW
None.

C. PETITIONS FOR REHEARING
None.

D. OTHER CASE MATTERS

1. *Eby v. State*, S. Ct. 34179 (Court of Appeals opinion filed May 15, 2009)

   The Supreme Court will take review of this case.

2. *Idaho Judicial Council v. Bradbury*, S. Ct. 36175

Deny motion to produce documents. [Illegible] 2:00pm. Steve to notify parties.

> I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the final minutes entered in the above entitled cause and now on record in my office. WITNESS my hand and Seal of this Court 7-16-09.
>
> STEPHEN W. KENYON Clerk
>
> By: /s/ [Illegible] Chief Deputy

CHIEF JUSTICE EISMANN'S CHAMBERS
ROBIN REIDER

5/4/09

Bradbury

Vacate hearing

IJC has 14 days to file a response to the mtn to Prod. Docs.

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Document entered in the above entitled cause and now on record in my office. WITNESS my hand and Seal of this Court 7-16-09.

STEPHEN W. KENYON Clerk

By: /s/ [Illegible] Chief Deputy

MICHAEL E. MCNICHOLS (ISB #993)
CLEMENTS, BROWN & McNICHOLS, P.A.
Attorneys at Law
321 13th Street
Post Office Box 1510
Lewiston, Idaho 83501
(208) 743-6538
(208) 746-0753 (Facsimile)

JOHN L. RUNFT (ISB #1059)
JON M. STEELE (ISB #1911)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Phone: (208) 333-8506
Fax: (208) 343-3246
Email: jlrunft@nmftlaw.com

M. KARL SHURTLIFF (ISB # 1213)
Attorney at Law
800 West State Street, Suite 200
P.O. Box 1652
Boise, Idaho 83701-1652
Telephone (208) 343-2900
Facsimile (208) 343-3282

Attorneys for Honorable John H. Bradbury

IN THE SUPREME COURT OF THE STATE OF IDAHO

In the matter of: THE INQUIRY CONCERNING DISTRICT JUDGE JOHN H. BRADBURY	Supreme Court No. 36175-2009 Judicial Council No. 2007-99 **RESPONDENT'S MOTION TO DISQUALIFY CHIEF JUSTICE EISMANN**
IDAHO JUDICIAL COUNCIL, Petitioner, v. JOHN H. BRADBURY, Respondent.	

COMES NOW Respondent, the Honorable John H. Bradbury, and pursuant to Canon 3E(1)(a) of the Idaho Code of Judicial Conduct, Idaho Appellate Rule 48, and by reference Idaho Rule of Civil Procedure 40(d)(2) and respectfully moves this honorable Court to disqualify the Honorable Chief Justice Eismann from presiding in the above entitled matter on the grounds that he has personal knowledge of disputed evidentiary facts outside of the record on appeal before this Court derived from his participation in the proceedings of the Idaho Judicial Council, which are the subject of this appeal and which personal knowledge might reasonably, from the objective standpoint[1] affect his impartiality in these proceedings. Respondent makes no claim of actual or intentional bias, but, rather, asserts that the facts of this matter in conjunction with Justice Eismann's Affidavit dated July 21, 2009, support Respondent's claim of objective bias or impartiality in violation of his due process rights under the Fourteenth and Fifth Amendments to the United States Constitution and of Canon 3E(1)(a) of the Idaho Code of Judicial Conduct.

This Motion is supported by a brief and the Affidavit of John L. Runft filed contemporaneously herewith.

DATED this 4th day of August 2009.

RUNFT & STEELE
LAW OFFICES, PLLC

By: ______________________
JOHN L. RUNFT
Attorney for Respondent

---

[1] The objective standard for bias or impartiality implementing the Due Process Clause do not require proof of actual bias. *See, Caperton, et al. v. A.T. Massey Coal Co., Inc.*, 556 U.S. ___ (2009), United States Supreme Court No. 08-92, decided June 8, 2009, at p. 13; *Etna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 820 (1986); *Mayberry v. Pennsylvania*, 400 U.S. 455-466 (1971); *In re Murchison*, 349 U.S. 133, 136 (1955); *Tumey v. Ohio*, 273 U.S. 510, 532 (1927).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of January 2010, a true and correct copy of the foregoing **RESPONDENT'S MOTION TO DISQUALIFY CHIEF JUSTICE EISMANN** was served upon opposing counsel as follows:

Robert Hamlin
Idaho Judicial Council
PO Box 1397
Boise, ID 83701

___ US Mail
___ Personal Delivery
___ Facsimile

R. Keith Roark
The Roark Law Firm
409 N. Main Street
Hailey, ID 83333

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Michael E. McNichols
Clements, Brown &
McNichols, PA
PO Box 1510
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M. Karl Shurtliff
Attorney at Law
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P.O. Box 1652
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JAMES D. CARLSON
BRIAN C. WONDERLICH,
Deputy Attorneys General
Statehouse, Room 210
P.O. Box 83720
Boise, ID 83720-0010

___ US Mail
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RUNFT & STEELE
LAW OFFICES, PLLC

By: _________________________
JOHN L. RUNFT
Attorney for Respondent

MICHAEL E. MCNICHOLS (ISB #993)
CLEMENTS, BROWN & McNICHOLS, P.A.
Attorneys at Law
321 13th Street
Post Office Box 1510
Lewiston, Idaho 83501
(208) 743-6538
(208) 746-0753 (Facsimile)

JOHN L. RUNFT (ISB #1059)
JON M. STEELE (ISB #1911)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Phone: (208) 333-8506
Fax: (208) 343-3246
Email: jlrunft@runftlaw.com

M. KARL SHURTLIFF (ISB # 1213)
Attorney at Law
800 West State Street, Suite 200
P.O. Box 1652
Boise, Idaho 83701-1652
Telephone (208) 343-2900
Facsimile (208) 343-3282

Attorneys for Honorable John H. Bradbury

IN THE SUPREME COURT OF THE STATE OF IDAHO

In the matter of:	)	Supreme Court Docket No. 36175-2009
THE INQUIRY CONCERNING DISTRICT JUDGE JOHN H. BRADBURY	)))))	Judicial Council No. 2007-99

IDAHO JUDICIAL COUNCIL, Petitioner, v. JOHN H. BRADBURY, Respondent.	))))))))	**AFFIDAVIT OF JOHN L. RUNFT IN SUPPORT OF RESPONDENT'S MOTION TO DISQUALIFY CHIEF JUSTICE EISMANN**

STATE OF IDAHO)
:ss
County of Ada)

COMES NOW, John L. Runft, being over the age of eighteen years and competent to make this Affidavit, after first being duly sworn, and upon his own personal knowledge, states as follows:

1. I am counsel for the Respondent, John H. Bradbury in the above case and make this Statement in Support of Respondent's Motion to Disqualify Chief Justice Eismann.
2. Except for the Affidavit of Chief Justice Eismann, all of the documents listed in, and attached as exhibits to this affidavit are true and correct copies of documents that have heretofore been introduced into these proceedings as part of the Idaho Judicial Council Record on appeal (hereafter "IJC R."). These documents are here presented for ready reference in support of Respondent's Motion to Disqualify Chief Justice Eismann.

3. Said Exhibits are as follows:

Exh. 1	Affidavit of Chief Justice Eismann, Exhibit 1 to Defendants' Memorandum in Opposition to Plaintiff's Motion for Temporary Restraining Order, etc. filed on July 27, 2009 in the case *Bradbury v. Eismann, et al*, U.S. Dist. Ct., Case No. CV 09-352-BLW.
Exh. 2	Letter dated 05-02-06 from the Idaho Judicial Council ("IJC") to Judge Bradbury notifying him of an *initial inquiry* as to whether he actually resides in Idaho County. (R., p. 170, Def's Exh. 18)
Exh. 3	Idaho Judicial Council Rules 28-31. (R., p. 127, Def's Exh. 2) (Note: this copy is from the IJC website in order to obtain a more legible rendition of said rules.)
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	in Idaho County and has reopened its file to "conduct a *preliminary investigation* into the matter," (R., p. 173, Def 's Exh. 21)
Exh. 7	Letter dated 01-22-08 from the IJC to Judge Bradbury giving him notice that "formal charges" will be brought against him and the matter scheduled for hearing. (R., p. 175, Def 's Exh. 22)
Exh. 8	Letter from attorney Keith Roark to Judge Bradbury's attorney, Mike McNichols, stating, *inter alia*, "the Council feels strongly that John Bradbury's refusal to obey the relevant statute . . . cannot be mediated away as if it never happened." (R., p. 177, Def 's Exh. 23)
Exh. 9	Resume of John H. Bradbury. (R., p. 129, Def 's Exh. 4)

Further your affiant sayeth naught.

DATED this 4th day of August 2009.

RUNFT & STEELE
LAW OFFICES, PLLC

By: ____________________
JOHN L. RUNFT
Attorney for Respondent

STATE OF IDAHO)
:ss
County of Ada)

SUBSCRIBED AND SWORN unto me this ___ day of August 2009.

____
Notary Public for
the State of Idaho
Residing at:
My Commission Expires:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of January 2010, a true and correct copy of the foregoing **AFFIDAVIT OF JOHN L. RUNFT IN SUPPORT OF RESPONDENT'S MOTION TO DISQUALIFY CHIEF JUSTICE EISMANN** was served upon opposing counsel as follows:

Robert Hamlin Idaho Judicial Council PO Box 1397 Boise, ID 83701	___ U.S. Mail, ___ Personal Delivery ___ Facsimile
R. Keith Roark The Roark Law Firm 409 N. Main Street Hailey, ID 83333	___ U.S. Mail, ___ Personal Delivery ___ Facsimile

Michael E. McNichols
Clements, Brown
& McNichols, PA
PO Box 1510
Lewiston, ID 83501

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M. Karl Shurtliff
Attorney at Law
800 W. State Street,
Suite 200
P.O. Box 1652
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JAMES D. CARLSON
BRIAN C. WONDERLICH,
Deputy Attorneys General
Statehouse, Room 210
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RUNFT & STEELE
LAW OFFICES, PLLC

By: ______________________
JOHN L. RUNFT
Attorney for Respondent

Michael E. McNichols (ISB #993)
CLEMENTS, BROWN & McNICHOLS, P.A.
Attorneys at Law
321 13th Street
Post Office Box 1510
Lewiston, Idaho 83501
(208) 743-6538
(208) 746-0753 (Facsimile)

John L. Runft (ISB #1059)
Jon M. Steele (ISB #1911)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Ste.400
Boise, ID 83702
(208) 333-8506
(208) 343-3246

Attorneys for John H. Bradbury

IN THE SUPREME COURT OF THE STATE OF IDAHO

In the matter of: THE INQUIRY CONCERNING DISTRICT JUDGE JOHN H. BRADBURY	)	Supreme Court Docket No. 36175-2009 Judicial Council No. 2007-99
IDAHO JUDICIAL COUNCIL, Petitioner, v. JOHN H. BRADBURY, Respondent.	)	**PETITION FOR EXTRAORDINARY RELIEF/MOTION FOR RECONSIDERATION**

Respondent, John H. Bradbury, files this Petition for Extraordinary Relief and moves this Court, pursuant to Rule 48 I.A.R. and Article V, Section 9 of the Idaho Constitution, to reconsider its ORDER dated May 28, 2009, denying Judge Bradbury's Motion For Order Requiring Idaho Judicial Council To Produce Documents and to order the Council to produce the documents requested by Judge Bradbury. This Petition and Motion is based upon the files and records of this case and upon the Memorandum in Support of hereof.

DATED this 18th day of June, 2009.

CLEMENTS, BROWN &
McNICHOLS, P.A.
AND
RUNFT & STEELE
LAW OFFICES

By: /s/ John L. Runft
JOHN L. RUNFT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of June 2009, a true and correct copy of the foregoing **PETITION FOR EXTRAORDINARY RELIEF/MOTION FOR RECONSIDERATION** was served upon opposing counsel as follows:

Robert Hamlin Idaho Judicial Council PO Box 1397 Boise, ID 83701	X ___ ___	U.S. Mail, Personal Delivery Facsimile
R. Keith Roark The Roark Law Firm 409 N. Main Street Hailey, ID 83333	X ___ ___	U.S. Mail, Personal Delivery Facsimile

RUNFT & STEELE
LAW OFFICES, PLLC

By: /s/ John L. Runft
JOHN L. RUNFT
Attorney for John H. Bradbury

Michael E. McNichols
CLEMENTS, BROWN & McNICHOLS, P.A.
Attorneys at Law
321 13th Street
Post Office Box 1510
Lewiston, Idaho 83501
(208) 743-6538
(208) 746-0753 (Facsimile)
ISB No. 993

IN THE SUPREME COURT
OF THE STATE OF IDAHO

INQUIRY CONCERNING:	)	**Supreme Court No:**
DISTRICT JUDGE	)	**36175-2009**
JOHN BRADBURY	)	
	)	MOTION TO CONTINUE HEARING and MOTION FOR ORDER REQUIRING IDAHO JUDICIAL COUNCIL TO PRODUCE DOCUMENTS

INTRODUCTION

District Judge John Bradbury respectfully moves this Court to continue the hearing on his VERIFIED PETITION FOR REVIEW OF JUDICIAL COUNCIL RECOMMENDATIONS, currently set for May 27, 2009, and to enter an order requiring the Idaho Judicial Council ("Council") to produce relevant and non-privileged documents as requested by Judge Bradbury in discovery.

FACTS

The Council has in its possession relevant documents that are not privileged that were requested by Judge Bradbury in discovery. Those documents include, but are not limited to: (1) the verified statement or statements that initiated these proceedings, (2) the records of earlier proceedings against Judge Bradbury on the same claim – i.e., that he fails to "actually reside" in Idaho County; (3) all of the minutes of the Council in which Judge Bradbury's name appears; and (4) the Report of Preliminary Investigation.

In addition to those documents, we believe that the Council has possession of other relevant documents. The basis of our belief is that the responses to our requests for additional relevant documents was [sic] not that the documents did not exist, but was [sic], instead, that the documents were "confidential."

On September 2, 2008, counsel for Judge Bradbury served interrogatories and requests for production of documents on the Special Examiner. (See Exhibit A to Affidavit of Michael E. McNichols). Pursuant to the Idaho Rules of Civil Procedure, incorporated by the Council Rule 22(b) the Council was obligated to raise any objections and to serve responses within thirty (30) days of the date of service of the discovery requests. The Council did not object to or respond to the discovery requests within thirty (30) days of the date they were served.

On November 11, 2008, seventy (70) days from the date of service of the discovery requests, and just over a month before the hearing date, the Special Examiner submitted responses (Exhibit A to Affidavit of Michael E.McNichols) to Judge Bradbury's requests for documents which were identical in each case: "Objection is hereby made to this request on the grounds that the material requested is confidential and not subject to disclosure under the Rules of the Idaho Judicial Council."

The Council's response did not state that the documents did not exist or that they were irrelevant or privileged. The Special Examiner did not provide a privilege log as required by Rule 26(b)(5)(A) I.R.C.P.

CONFIDENTIALITY

As noted, the Special Examiner claimed that the documents are "confidential" pursuant to the Rules of the Council.

While it is true that the Council has adopted its Rule 24 providing that all papers filed are "confidential," that Rule is contrary to the statutes which created the Council and in particular is contrary to Idaho Code § 1-2103 which states: "All papers shall be subject to disclosure according to Chapter 3, Title 9, Idaho Code."

Idaho Code § 9-342(1) provides: "A person may inspect and copy the records of a public agency or independent body corporate and politic **pertaining**

to that person even if the record is otherwise exempt from public disclosure." (Emphasis added).

In the earlier case of *Bradbury v. Idaho Judicial Council*, Case No. CV 0C 9902777D in Ada County, Idaho, the Council claimed that its records were confidential and not subject to discovery by reason [sic] the Idaho Court Administrative Rules (ICAR). In his MEMORANDUM DECISION AND ORDER (Exhibit B to Affidavit of Michael E. McNichols) Judge Wilper recognized that an accused judge has liberty and property rights that at are stake in a disciplinary proceedings [sic] before the Council and said: "Due process rights exist for the alleged perpetrator, . . . " (Memorandum Decision and Order, page 7, line 15). Judge Wilper also said: "An accused judge, whose conduct is being examined, and whose rights are at stake, should be allowed access to the hearing and have access to the records of that hearing, . . . " (Memorandum Decision and Order, page 8, lines 20-22).

While it is true that ICAR 32(g)(25) provides that records and proceedings of the Council are confidential, ICAR Rule 32(c) provides:

"**Applications**. This Rule shall apply to all court records existing on or after the date of adoption of this rule. Provided, this rule shall not prevent access to records, otherwise exempt from disclosure by the following persons in the following situations.

(2) **Parties to an action and their attorney** examining the court file of the action, unless

restricted by order of the Court, except as limited in paragraphs (g)(11), (12), (15) and (17)(F)." (Emphasis added).

Accordingly, Council Rule 24 is contrary to Idaho Code § 9-342(1) of the Idaho Public Records Act and ICAR 32(c)(2).

The requested documents are relevant and the Special Examiner did not claim that they were not relevant. Any objection based on relevance was waived.

Rule 33 of the Council Rules provides, in part: "At a hearing before the Council or masters only evidence as is admissible in civil cases shall be received; provided, however, that the Council may review and consider previous proceedings against the proposed judge." It would be unfair if the Council reviewed previous proceedings against an accused judge but didn't give the accused judge an opportunity to see the record of the previous proceedings.

According to a letter dated January 22, 2008, from the Executive Director of the Council to Judge Bradbury, the Council has reviewed and discussed a "Report of Preliminary Investigation" which has not been produced and is claimed to be "confidential." It is unfair that the Council has reviewed and discussed the Report concerning the charges against Judge Bradbury but won't give Judge Bradbury an opportunity to see the Report. A true copy of the letter is attached as Exhibit C to the Affidavit of Michael E. McNichols.

The Council has a website which includes “Frequently Asked Questions”. As [sic] copy of the “Frequently Asked Questions” is attached as Exhibit D to the Affidavit of Michael E. McNichols. Question No. 5 of the frequently asked questions is: “Is my complaint confidential? Answer: Yes. By statute, complaints and the identity of complainants are confidential. **If the Council conducts a preliminary investigation, the judge will receive a copy of your complaint.** When a Council recommendation is filed with the Supreme Court, it becomes a public document which can be reviewed in the Supreme Court clerk’s office.” (Emphasis added). The Council has announced on the internet that a copy of the complaint would be given to the accused judge but has refused to give Judge Bradbury a copy of the complaint against him.

In fact, the Council has provided Judge Bradbury with the complaints that were filed in the two other discipline cases in which he has been involved, both of which were dismissed. The letter of the Executive Director of the Council to Judge Bradbury dated December 9, 2004, (Exhibit E to the Affidavit of Michael E. McNichols), begins: “Enclosed is a copy of the complaint filed by Rich Bellon.” A letter dated March 18, 2008, (Exhibit F to the Affidavit of Michael E. McNichols), from the Executive Director of the Council to Judge Bradbury begins: “Enclosed is a complaint filed by Merrily Munther.” It is hard to understand why the complaint in the present case is withheld on the grounds that it is "confidential" when the complaints in the other two cases were freely provided to Judge Bradbury.

Judge Bradbury is unable to point with specificity to the contents of the documents because he has not seen the documents because they are being withheld by the Council.

Rule 34(a) of Council Rules provides: "An accused judge shall have the right and a reasonable opportunity to defend against the charges . . . "

Judge Bradbury did not have a reasonable opportunity to defend himself against the charges because the Special Examiner refused to produce the requested relevant and non-privileged documents prior to the hearing.

CONCLUSION

The Council's rule on confidentiality is contrary to Idaho Code § 9-342(1) and Rule 32(c) I.C.A.R. The documents are discoverable. The Special Examiner did not claim that the documents do not exist and did not claim that they are irrelevant or privileged.

Judge Bradbury was unable to adequately defend himself against the anonymous charges brought against him because he did not have an opportunity to see the contents of those charges and all other relevant documents in order to pursue additional discovery based upon those documents.

Judge Bradbury respectfully requests that the hearing scheduled for May 27, 2009, be continued and that this Court order the Council to produce the documents to Judge Bradbury's counsel so that Judge Bradbury may have a complete opportunity to defend himself and also may have the opportunity to determine whether he wishes to ask this Court for an opportunity to present additional evidence to this Court.

CLEMENTS, BROWN &
McNICHOLS, P.A.

By: /s/ Michael E. McNichols
Michael E. McNichols

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

R. Keith Roark
The Roark Law Firm
409 N. Main Street
Hailey, ID 83333

X U.S. MAIL
___ HAND DELIVERED
___ OVERNIGHT MAIL
___ TELECOPY (FAX)

/s/ Michael E. McNichols
Michael E. McNichols

BEFORE THE IDAHO JUDICIAL COUNCIL
STATE OF IDAHO

------------------------------------x
Inquiry Concerning :
DISTRICT JUDGE :
JOHN H. BRADBURY :
Discipline File: 2007-99 :
------------------------------------x

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Held on December 17, 2008, 9 a.m.

before Hon. Ronald J. Wilper,
Presiding Member, Hearing Officer

Sherry Krulitz, Vice Chairman
J. Philip Reberger, Secretary
William A. Parsons
Ronald M. Nate, Ph.D.

Idaho Supreme Court
451 West State Street
Boise, Idaho

Reported by
Dianne E. Cromwell
CSR No. 21

[2] APPEARANCES

FOR SUPREME COURT, SPECIAL EXAMINER

R. Keith Roark
ROARK LAW FIRM
409 N Main St
Hailey, ID 83333
Tel: (208) 788-2427
Fax: (208) 788-3918
keithroark@roarklaw.com

FOR JUDGE BRADBURY

Michael E. McNichols
CLEMENTS BROWN & MCNICHOLS PA
321 13th St
PO Box 1510
Lewiston, ID 83501-1510
Tel: (208) 743-6538
Fax: (208) 746-0753
mmchichols@clbrmc.com

FOR THE IDAHO JUDICIAL COUNCIL

Robert G. Hamlin
PO Box 1397
Boise, ID 83701
Tel: (208) 334-5213
ijc@idcourtsnet [sic]

* * *

[3] IDAHO JUDICIAL COUNCIL WITNESSES

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* * *

[27] A. I have page 10.

Q. If you will look – and I realize the pagination here is a little bit confusing because of the way the transcript came out, but if you look at line 2, beginning at line 2.

A. Um-hmm.

Q. Your answer to the question was, part of the answer: "To the extent I can do that, consistent with my work, I have done that. But my work is not in Idaho County. I get most of my work in Idaho County done in half a day unless I have a trial there."

A. That is still the case. I am lucky to have half a day's work in Idaho County. A full half a day's work in Idaho County is a busy day, unless I have a trial. And I've had – this year I've had more trials in Idaho County, for reasons that I can explain if you want. But I've had more trials in Idaho County this year than I've ever had. I have very few trials. I had as many trials in Clearwater County as I had the other two combined.

Q. I understand that, sir. So what you were telling Mr. Hamlin is that unless you have a trial in Idaho County, you don't stay in [28] Grangeville for the evening.

A. That's right.

Q. And you have approximately one-half day's work normally per week.

A. That would be a busy, busy day.

Q. In Idaho County.

A. In Idaho County.

Q. So in fact, then, what you're saying to Mr. Hamlin was that you could live, that is stay, in Grangeville in the evenings, but if you did that, you couldn't get your work out.

A. I could not do my work as a judge and spend every evening in Grangeville. I could not do it. It would involve seven or eight hours of commuting a week, and I don't know anybody that would do that. At my age I'm not prepared to do it, and I don't know of any other judge that would.

Q. Or you could get your work done, in which case you wouldn't be living in Grangeville.

A. I consider myself to be a resident of Grangeville, and when I work in Grangeville, I reside in Grangeville. I have a $100,000 house in Grangeville that I bought specifically for the purpose of being in Grangeville and residing [29] there. And when I work there, I am there.

Q. I understand that, sir. But you have testified, have you not, that you are there one-half day per week.

A. I said I have one-half day's work. I'm there all day.

Q. So at most out of seven days per week –

MR. McNICHOLS: Your Honor, he should let the witness finish the answer.

HEARING OFFICER: Go ahead, counsel.

THE WITNESS: Well, and the fact is, is when I have trials there, I'm there multiple days, and I am often there more than one day. And I have a drug court and a mental health court, that even if I have just a half a day's work, I stay there to do so that those specialty courts can operate.

Q. BY MR. ROARK: I understand that, sir. But unless you have a trial, you are not staying in Grangeville overnight. Isn't that correct?

A. That's right.

Q. Thank you.

A. That's not correct, actually. That is not correct. I mean, this year, actually, I have been spending multiple nights in Grangeville [30] because I've been going – since I've had more trials there, I've been going on from Nez Perce to Grangeville on Wednesdays, staying over Wednesday night, doing my work in Grangeville on Thursday and then leaving. So I won't have to – it's a four-hour commute from Moscow to Grangeville or Grangeville to Moscow, and I am in Moscow many Fridays.

Q. I understand that. But as a practical matter, you are spending less than one night per week in Grangeville unless there's a trial. Correct?

A. That's true.

Q. Thank you. Now, on page 11, if you'll take a look at that. Right at the top of the page and perhaps you will need to look at the preceding page. Let's start with page 10, line 16, referring to this question of where you were staying overnight.

You said, did you not, "So I'm in the dilemma, do I do my job, or do I spend all my time in Grangeville?

And my constitutional duty is to do my job, and I think it trumps whatever the statutory obligation might be."

Those were your words, were they not?

[31] A. They were.

Q. So you recognize at the time of this interview with Mr. Hamlin, that is the October 31, 2007 interview, that you had a statutory obligation to actually live in, that is, stay in Grangeville overnight. Correct?

A. No. I do not acknowledge that.

MR. McNICHOLS: Let him finish his answer.

THE WITNESS: He was there saying – they were questioning whether I actually resided. If their definition was actually reside means spend every night in Grangeville, then yes, I think it did trump it. That has never been my own interpretation of it. I think I do reside in Grangeville. I bought a house to reside in Grangeville. I think I am a resident of both Grangeville and Lewiston, and depending on what work I have, that's where I am.

Q. BY MR. ROARK: Which, again, is less than one night per week in Grangeville, Idaho.

A. It's less than one night a week up until this year where I've had at least one night a week and sometimes two, because I've had more trials.

Q. And did that start after the notice of [32] charge was filed?

A. It started when the workload increased. I would like to explain that if you like. I've had five or six trials in Grangeville this year, and usually I would have one or two a year.

Q. I understand, sir.

A. And that's because we have a new public defender who actually defends, actually goes to trial.

Q. Without involving the public defender, if you would look at page 13 of the transcript. Isn't it true that you told Mr. Hamlin that you wanted to do your job and wanted to comply with the law, but you couldn't do both?

A. I did, in the context of his questioning my residency. I never thought that I wasn't complying with the residency. Mr. Hamlin apparently thought I wasn't.

Q. You were –

A. Can I finish, please?

Q. Go ahead.

A. I mean, I was answering – I was talking with Mr. Hamlin, and I told him I think during the interview that I thought I was a public official, I thought the public was entitled to [33] know what I was doing, why I was doing it, and as a result, I was talking to him.

I frankly didn't know what I was defending. I didn't know what the council's interpretation of residence was. I didn't know what the complaint had said that I was doing wrong because I had never been given a copy of the complaint. I was defending a complaint of which I was unaware with a legal standard that hadn't been articulated. I was never told until October of this year that the council's interpretation of actually reside meant reside – live there full time.

In all the time that we've been going, that's the first notice I had of the council's interpretation, and it was in a letter from you in response to our effort to try to mediate this. That's the first time I knew what the legal standard was as understood by the council.

Q. Your Honor, let's go back to the words that you spoke on the very first day of October 2007. You said, did you not: "And I want to do my job, and I want to comply with the law, but I can't do both as much as I want to." Those are your words, are they not?

[34] A. They are my words, and I told you those are my words, and I have explained the context in which I said them.

Q. So you knew on the 31st of October what it was under the law, but you didn't feel you would comply –

A. No, that's not true. I knew Mr. Hamlin was there questioning my residence, and he was obviously questioning the status quo as I had described it to him. And if his understanding of the status quo was that I was not a resident, then I wasn't complying. I thought, I've always thought, I didn't invest $100,000 in a house in Grangeville to try to get around the law.

When I was elected, Mr. Roark, there had been -- in three years before I was elected, there had been three jury trials, 465 felony charges filed; only three jury trials, all DUIs. Two of them had been tried in Idaho County, one had been tried in Clearwater County.

And I assumed, because Idaho County has a population that is almost twice Lewis and Clearwater combined, that that's where my work would be. And I bought that house fully expecting to be required to – and actually wanting to. I [35] had lived in Idaho County five years before. I had a ranch, cattle ranch. I was on the Idaho County Soil and Conservation Board, I have nothing against Idaho County.

But I was looking at more than I could do well two days in Clearwater County and not having a half a day's work in Idaho County, and that is the only reason that I have done what I have done. I have never had an intention nor have I thought I was not residing in Idaho County, ever.

Q. BY MR. ROARK: Your Honor, very few days passed by that you were not required to read and interpret statutes. Isn't that correct?

A. That's right.

Q. And you are well aware of what Idaho Code Section 1-809 says?

A. I am.

Q. And it says "actually reside," does it not?

A. It does.

Q. And you are not actually residing –

A. I am actually residing.

Q. Even though you spent at least six if not seven days per week in another house in [36] another county. Is that correct?

A. That's right. That's exactly right.

Q. Because it's your interpretation of the law that you don't have to spend any number of nights in Idaho County as long as you own a residence.

A. No, as long as the work isn't there. I cut my travel time, traveling from Lewiston to Orofino, in half. It's an hour and a half each way from Orofino to Grangeville. It's 40 minutes from Lewiston. That cuts my travel time in half. And one of the reasons – you brought up the Clearwater County.

One of the reasons that I wanted to be able to reside in Clearwater County is that would cut my travel time to Orofino to practically nothing. And when you're traveling six or seven hours a week, you try to get it so you can be where the job is so you can get your work done.

I have never, ever not been in Idaho County because I didn't want to be in Idaho County or didn't think I didn't reside there. And I still would like to know what the council's definition of actual reside is.

There is nothing in that statute, [37] Mr. Roark, that talks about frequency or duration, nothing. And I think that I'm entitled before I'm held accountable under a law, that I'm entitled to know what it means. And I've never been told that until we got your letter saying it meant live full time. And my looking at the law, residence doesn't require that.

Q. And can you refer me and the members of council to that statute which says that you don't actually have to reside in Idaho County if the work is not in Idaho County?

A. I do actually reside in Idaho County. Mr. Roark, you keep saying that I don't. I have a house there. I stay there. I'm there every week. I'm in that house every single week.

Q. Sir, did –

MR. McNICHOLS: Let him finish.

HEARING OFFICER: Hang on. I'm going to overrule the objection. The question has been answered.

You may pose your next question, Mr. Roark.

MR. ROARK: Thank you.

Q. BY MR. ROARK: Isn't it true, Judge Bradbury, that you told Robert Hamlin that

* * *

[68] A. Yes.

Q. Is both an initial inquiry and a preliminary investigation – I should have said, are both initial inquiry of preliminary investigation required as procedural predicates for the filing of formal charges?

A. Well, the preliminary investigation is, the council, under the rule, at least the way I understand the rule, has the ability to conduct an inquiry on its own or file a complaint on its own motion. So the way the rules – that's at the bottom of the rules, so that council I think can go on its own motion directly to the preliminary investigation stage.

The general procedure is that when we get a complaint, if we have a complaint filed by actually a third party, a verified complaint, then we do do the initial inquiry and then move to the preliminary if the evidence shows that and then move to the next step.

Q. Was there a complaint or a verified statement about Judge Bradbury's residence ever filed with the council?

A. No.

Q. No complaint was ever filed.

* * *

[83] And you are concurring, I take it, or Mr. McNichols, you're not offering this exhibit to show that the Judicial Council was making an offer to settle this matter through mediation, or something like that, but to show that the Judicial Council perhaps or the special examiner was sort of adopting an admission that the Judicial Council's belief of what it meant to be a resident was, the definition set forth in the letter?

MR. McNICHOLS: That's it.

HEARING OFFICER: I'll admit it for that purpose. And counsel will be able to consider this exhibit for that limited purpose only and for no other purpose. So 23 is admitted for a limited purpose.

(Exhibit 23 admitted.)

Q. BY MR. MCNICHOLS: Have you had a chance to read Exhibit 23?

A. Yes.

Q. And does it say in part that, as a condition relating to Judge Bradbury, he agrees to immediately take up full-time residence?

A. Yes.

Q. Did the council determine that the [84] statutory words actually reside mean actually reside full time?

A. Maybe I can answer it best because there was no actual – and I don't think it's appropriate for me to discuss actual deliberations of the Judicial Council. The Judicial Council did see this letter prior to it being sent to you.

Q. Did the Judicial Council ever take any action to determine that "actually resides" means "actually resides full time"?

A. Take actual, action, no. Help me out.

Q. In any way – I mean, how do we get here? How do you get from actually resides to full time?

Let me ask you this question: Is this letter, Exhibit 23, October 7 of 2008, which is just a little over two months ago, two months and nine days, the first time that Judge Bradbury was ever notified that what the council thought or might think actually resides means is actually resides full time, was the first mention of full time?

A. If your question is, did I ever tell Judge Bradbury that the Judicial Council interprets actual reside to actual reside full [85] time, I don't recall ever telling that to Judge Bradbury. I'm sure we discussed the statute says actually resides. Did I try to offer an interpretation on behalf of the Judicial Council for those words? I would think I did not. I don't recall ever doing that.

Q. And to your knowledge did the special examiner ever indicate to Judge Bradbury in any way that his or the council's interpretation was full time?

A. I have no idea what the special examiner did.

Q. He sent you copies of all the communications, hasn't he? Has he sent you all the communications between him and me?

A. I assume he has. I've seen the pleadings that you have filed and given us copies. I'm not trying to be evasive. I don't know what has gone between you two, if there has been other matters. I've seen all the pleadings. I have seen this letter.

Q. Do you have any reason to believe that at any time before October 7 of 2008 anyone told Judge Bradbury that he was being accused of failing to reside full time in Idaho County?

* * *

Michael E. McNichols
CLEMENTS, BROWN & McNICHOLS, P.A.
Attorneys at Law
321 13th Street
Post Office Box 1510
Lewiston, ID 83501
ISB #993
Telephone: (208) 743-6538
Facsimile: (208) 743-9295

BEFORE THE IDAHO JUDICIAL COUNCIL

INQUIRY CONCERNING: **DISTRICT JUDGE JOHN BRADBURY**	**) MOTION TO CONTINUE HEARING ON FORMAL CHARGES and MOTION FOR ORDER REQUIRING PRODUCTION OF DOCUMENTS**

INTRODUCTION

District Judge John Bradbury respectfully moves the Idaho Judicial Council to continue the hearing on the formal charges against him, currently set for December 17, 2008, and to enter an order requiring production of relevant and non-privileged documents as requested by him in discovery.

FACTS

The Idaho Judicial Council has in its possession relevant documents that are not privileged that have been requested by Judge Bradbury in discovery.

Those documents include, but are not limited to: (1) the verified statement or statements that initiated these proceedings, (2) the records of earlier proceedings against Judge Bradbury on the same claim – i.e., that he fails to "actually reside" in Idaho County; and (3) the Report of Preliminary Investigation.

In addition to those documents, we believe that the Idaho Judicial Council has possession of other relevant documents. The basis of our belief is that the responses to our requests for additional relevant documents was not that the documents did not exist, but was, instead, that the documents were "confidential."

On September 2, 2008, counsel for Judge Bradbury served interrogatories and requests for production of documents on the Special Examiner. (See Exhibit A to Affidavit of Michael E. McNichols). Pursuant to the Idaho Rules of Civil Procedure, incorporated by the Idaho Judicial Council Rule 22(b) the Council was obligated to raise any objections and to serve responses within thirty (30) days of the date of service of the discovery requests. The Council did not object to or respond to the discovery requests within thirty (30) days of the date they were served.

On November 11, 2008, seventy (70) days from the date of service of the discovery requests, and just over a month before the hearing date, the Special Examiner submitted responses (Exhibit A to Affidavit of Michael E. McNichols) to Judge Bradbury's requests for documents which were identical in each case: "Objection is hereby made to this request on the grounds that the material requested is confidential and not subject to disclosure under the Rules of the Idaho Judicial Council."

The Council's response did not state that the documents did not exist or that they were irrelevant or privileged. The Special Examiner did not provide a privilege log as required by Rule 26(b)(5)(A) I.R.C.P.

CONFIDENTIALITY

As noted, the Special Examiner claims that the documents are "confidential" pursuant to the Rules of the Idaho Judicial Council.

While it is true that the Idaho Judicial Council has adopted its Rule 24 providing that all papers filed are "confidential," that Rule is contrary to the statutes which created the Idaho Judicial Council and in particular is contrary to Idaho Code § 1-2103 which states: "All papers shall be subject to disclosure according to Chapter 3, Title 9, Idaho Code."

Idaho Code § 9-342(1) provides: "A person may inspect and copy the records of a public agency or independent body corporate and politic **pertaining to that person** even if the record is otherwise exempt from public disclosure." (Emphasis added).

In the earlier case of *Bradbury v. Idaho Judicial Council,* Case No. CV 0C 9902777D in Ada County, Idaho, the Judicial Council claimed that its records were confidential and not subject to discovery by reason [sic] the Idaho Court Administrative Rules (ICAR). In his MEMORANDUM DECISION AND ORDER (Exhibit B to Affidavit of Michael E. McNichols) Judge Wilper recognized that an accused judge has liberty and property rights that at are stake in a disciplinary proceedings [sic] before the Judicial Council and said: "Due process rights exist for the alleged perpetrator, . . . " (Memorandum Decision and Order, page 7, line 15). Judge Wilper also said: "An accused judge, whose conduct is being examined, and whose rights are at stake, should be allowed access to the hearing and have access to the records of that hearing, . . . " (Memorandum Decision and Order, page 8, lines 20-22).

While it is true that ICAR 32(g)(25) provides that records and proceedings of the Idaho Judicial council are confidential, ICAR Rule 32(c) provides:

"**Applications.** This Rule shall apply to all court records existing on or after the date of adoption of this rule. Provided, this rule shall not prevent access to records, otherwise exempt from disclosure by the following persons in the following situations.

(2) **Parties to an action and their attorney** examining the court file of the action, unless restricted by order of the Court, except as limited in paragraphs (g)(11), (12), (15) and (17)(F)." (Emphasis added).

Accordingly, Idaho Judicial Council Rule 24 is contrary to Idaho Code § 9-342(1) of the Idaho Public Records Act and ICAR 32(c)(2).

While it is true that Idaho Code § 1-2103 provides, in part: "The Judicial Council shall by rule provide for procedures under this Section, including the exercise of requisite process and subpoena power." that grant of authority does not grant the Judicial Council authority to provide that records are confidential when the legislature has expressly provided that they are subject to disclosure pursuant to Chapter 3, Title 9, Idaho Code.

The requested documents are relevant and the Special Examiner did not claim that they were not relevant. Any objection based on relevance is waived.

Rule 33 of the Idaho Judicial Council Rules provides, in part: "At a hearing before the Council or masters only evidence as is admissible in civil cases shall be received; provided, however, that the Council may review and consider previous proceedings against the proposed judge." It would be unfair if the Council reviewed previous proceedings against an accused judge but didn't give the accused judge an opportunity to see the record of the previous proceedings.

According to a letter dated January 22, 2008, from the Executive Director of the Council to Judge Bradbury, the Council has reviewed and discussed a "Report of Preliminary Investigation" which has not been produced and is apparently claimed to be "confidential." It is unfair that the Council has reviewed and discussed the Report concerning the charges against Judge Bradbury but won't give Judge

Bradbury an opportunity to see the Report. A true copy of the letter is attached as Exhibit C to the Affidavit of Michael E. McNichols.

The Idaho Judicial Council has a website which includes "Frequently Asked Questions". As copy of the "Frequently Asked Questions" is attached as Exhibit D to the Affidavit of Michael E. McNichols. Question No. 5 of the frequently asked questions is: "Is my complaint confidential? Answer: Yes. By statute, complaints and the identity of complainants are confidential. **If the Council conducts a preliminary investigation, the judge will receive a copy of your complaint.** When a Council recommendation is filed with the Supreme Court, it becomes a public document which can be reviewed in the Supreme Court clerk's office." (Emphasis added). The Council has announced on the internet that a copy of the complaint would be given to the accused judge but has refused to give Judge Bradbury a copy of the complaint against him.

In fact, the Council has provided Judge Bradbury with the complaints that were filed in the two other discipline cases in which he has been involved, both of which were dismissed. The letter of the Executive Director of the Council to Judge Bradbury dated December 9, 2004, (Exhibit E to the Affidavit of Michael E. McNichols), begins: "Enclosed is a copy of the complaint filed by Rich Bellon." A letter dated March 18, 2008, (Exhibit F to the Affidavit of Michael E. McNichols), from the Executive Director of the Council to Judge Bradbury begins: "Enclosed is a complaint filed by Merrily Munther." It is hard to understand why the complaint in the present case is withheld on the grounds that it is "confidential" when the complaints in the other two cases were freely provided to Judge Bradbury.

Judge Bradbury is unable to point with specificity to the contents of the documents because he has not seen the documents because they are being withheld by the Council.

Rule 34(a) of Idaho Judicial Council Rules provides: "An accused judge shall have the right and a reasonable opportunity to defend against the charges . . ."

Judge Bradbury will not have a reasonable opportunity to defend against the charges unless the Special Examiner is required to produce the requested relevant and non-privileged documents prior to a hearing on the charges.

CONCLUSION

The Idaho Judicial Council's rule on confidentiality is contrary to Idaho Code § 9-342(1) and Rule 32(c) I.C.A.R. The documents are discoverable. The Special Examiner did not claim that the documents do not exist and did not claim that they are irrelevant or privileged.

Judge Bradbury is unable to adequately defend himself against the anonymous charges brought against him without having an opportunity to see the contents of those charges and all other relevant documents and to pursue additional discovery based upon those documents.

Judge Bradbury respectfully requests that the hearing scheduled for December 17, 2008, be continued and that the Council order that the requested documents be produced to Judge Bradbury's counsel.

CLEMENTS, BROWN &
McNICHOLS, P.A.

By: Michael E. McNichols
Michael E. McNichols

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

R. Keith Roark
The Roark Law Firm
409 N. Main Street
Hailey, ID 83333

X U.S. MAIL
___ HAND DELIVERED
___ OVERNIGHT MAIL
X TELECOPY (FAX)

Michael E. McNichols
Michael E. McNichols

BEFORE THE IDAHO JUDICIAL COUNCIL

INQUIRY CONCERNING:	)	**ANSWERS TO IN-**
DISTRICT JUDGE	)	**TERROGATORIES**
JOHN BRADBURY	)	**AND REQUEST FOR**
	)	**PRODUCTION**

COMES NOW, R. Keith Roark, SPECIAL EXAMINER duly appointed by the Idaho Judicial Council and hereby provides these ANSWERS TO INTERROGATORIES AND RESPONSE TO REQUESTS FOR PRODUCTION propounded and served by District Judge John Bradbury.

INTERROGATORIES

INTERROGATORY NO. 1: Please state the name, address and telephone number of each and every person who has any knowledge or claims to have any knowledge of any evidence discoverable in this proceeding.

ANSWER TO INTERROGATORY NO. 1: Because the facts and circumstances of certain aspects of this case are well known to a number of people, this responding party is unable to state or otherwise provide the name, address and telephone number of each and every person who has any knowledge or claims to have any knowledge of the evidence discoverable in this proceeding. However, the following individuals are believed to have knowledge and information germane to these proceedings and, consequently, discoverable:

a. Robert Hamlin, Executive Director, Idaho judicial Council, P.O. Box 13971, Boise, Idaho 83701.

b. Tonya Kennedy, City of Grangeville, 225 W. North St, Grangeville, ID 83530. Telephone number 208 983 2851.

3. [sic] Kathy Johnson, Idaho County Courthouse, Grangeville, Idaho.

INTERROGATORY NO. 2: State of [sic] the name, address and any other identification of every person whom you expect a [sic] call as an expert witness at any hearing conducted in these proceedings.

ANSWER TO INTERROGATORY NO. 2: Any or all of the persons listed in answer to interrogatory number one may be called as a witness in this matter. Additionally, the special Examiner may call the Honorable John Bradbury.

INTERROGATORY NO. 3: With respect to each and every person whom you expect to call as an expert witness, state the following:

a. Identify the witness fully and summarize his or her qualifications and background;

b. State the subject matter on which he or she is expected to testify;

c. State the substance of the facts and opinions to which he or she is expected to testify; and

d. Pursuant to rule 705 of the Idaho rules of evidence, you are requested to disclose the underlying facts and data upon which the expert bases his or her opinion's [sic]

ANSWER TO INTERROGATORY NO. 3: No expert witnesses have been retained and none are expected to be called.

INTERROGATORY NO. 4: Identify in specific detail each and every document, as defined above, which contains, makes reference to or relates to any factual matter involved in this proceeding or which contains or relates to any item of discoverable evidence. Also please state the name, address and telephone number of each custodian of each item described.

ANSWER TO INTERROGATORY NO. 4: Attached hereto as Exhibit "1" please find the Notice of Preliminary Investigation in this case. Attached as Exhibit "2" please find two letters from Judge John Bradbury regarding the matters concerned in this proceeding. Attached as Exhibit "3" please find a full and complete transcript of an interview conducted by Robert Hamlin, Executive Director, Idaho Judicial Council with Judge John Bradbury. Attached as Exhibit "4" please find a series of travel expense vouchers submitted by Judge John Bradbury to the Administrative Office of the Courts, Idaho Supreme Court, Boise, Idaho. The custodian of these documents is the Clerk of the Supreme Court, Boise, Idaho. Attached hereto as Exhibit "5" is a series of water usage reports and water bills from the City of Grangeville, Idaho for a residential property owned by Judge John Bradbury. Custodian of these documents is Tonya Kennedy, City of Grangeville, 225 W. North St. Grangeville, ID 83530.

INTERROGATORY NO. 5: If you contend that District Judge John Bradbury, or any person acting on behalf of Judge John Bradbury has made any admission or statement against interest relevant to these proceedings, state the following:

a. The identity of the person who made the admission or statement.

b. The date and place where the admission or statement was made.

c. The name, address and telephone number of each person present at the time the admission or statement was made.

d. Whether the admission or statement was oral or written.

e. If the admission or statement was written, the identity of the custodian of each admission and statement.

f. If the admission or statement was oral, the exact and complete content of the admission or statement to the best of your knowledge.

ANSWER TO INTERROGATORY NO. 5: Please see Exhibit "3", attached hereto.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: All documents identified by you in your answers to the interrogatories served with this request

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Please see Exhibits "1" through "5" attached hereto and incorporated by reference herein as if set forth in their entirety.

REQUEST FOR PRODUCTION NO. 2: Complete copies of all minutes of all meetings of the Idaho judicial Council which contain Judge Bradbury's name.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Objection is hereby made to this request on the grounds that the material requested is confidential and not subject to disclosure under the rules of the Idaho judicial Council.

REQUEST FOR PRODUCTION NO. 3: The verified statements required by Idaho Judicial Council Rule 28(a) which precipitated the Idaho Judicial Council's preliminary investigation in this case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Objection is hereby made to this request on the grounds that the material requested is confidential and not subject to disclosure under the rules of the Idaho Judicial Council.

REQUEST FOR PRODUCTION NO. 4: All verified statements filed with the Idaho Judicial Council pursuant to Rule 28(a) against Judge Bradbury other than the verified statement which precipitated the commencement of the preliminary investigation in this case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Objection is hereby made to this request on the grounds that the material requested is confidential and not subject to disclosure under the rules of the Idaho Judicial Council.

REQUEST FOR PRODUCTION NO. 5: All documents received by or generated by the Idaho Judicial Council in response to each other verified statement filed with the Council pursuant to Rule 28(a).

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Objection is hereby made to this request on the grounds that the material requested is confidential and not subject to disclosure under the rules of the Idaho judicial Council.

REQUEST FOR PRODUCTION NO. 6: All written communications relating to or referring to the investigation of Judge Bradbury in this case to and from each member of the Idaho Judicial Council and to and from the executive director of the Council.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Objection is hereby made to this request on the grounds that the material requested is confidential and not subject to disclosure under the rules of the Idaho judicial Council.

Dated this 11th day of
November, 2008.

/s/ R. Keith Roark
R. KEITH ROARK,
Special Examiner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of November, 2008, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Michael E. McNichols
CLEMENTS, BROWN & McNICHOLS
321 13th Street
Post Office Box 1510
Lewiston, Idaho 83501

✓ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

____ By hand delivering copies of the same to the attorney/s.

____ By telecopying copies of same to said attorney(s) at the telecopier number/s: 788-4143.

/s/ R. Keith Roark
R. KEITH ROARK

MICHAEL E. MCNICHOLS (ISB #993)
CLEMENTS, BROWN & McNICHOLS, P.A.
Attorneys at Law
321 13th Street
Post Office Box 1510
Lewiston, Idaho 83501
(208) 743-6538
(208) 746-0753 (Facsimile)

JOHN L. RUNFT (ISB #1059)
JON M. STEELE (ISB #1911)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Phone: (208) 333-8506
Fax: (208) 343-3246
Email: jlrunft@runftlaw.com

M. KARL SHURTLIFF (ISB # 1213)
Attorney at Law
800 West State Street, Suite 200
P.O. Box 1652
Boise, Idaho 83701-1652
Telephone (208) 343-2900
Facsimile (208) 343-3282

Attorneys for Honorable John H. Bradbury

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN H. BRADBURY, **Petitioner,**	)	Supreme Court No. 36175-2009
v.	)	Judicial Council No. 2007-99
IDAHO JUDICIAL COUNCIL,	)	**NOTICE OF COMPLIANCE**
Respondent.	)	(Filed Sept. 30, 2009)

TO: The Idaho Supreme Court, Respondent Idaho Judicial Council and its counsel of record:

Notice is hereby given that pursuant to the Order of the Idaho Supreme Court contained in the Court's 2009 Opinion No. 114 entered on September 10, 2009, Petitioner John H. Bradbury has herewith filed his affidavit confirming that he is actually residing in Idaho County and will continue to reside in Idaho County so long as he is required to do so by law and setting forth specific steps he has taken to comply with said order. Petitioner reserves any and all rights to any further legal recourse that he may have.

DATED this 30th day of September 2009.

RUNFT & STEELE
LAW OFFICES, PLLC

By: /s/ John L. Runft
JOHN L. RUNFT
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of September 2009, a true and correct copy of the foregoing **NOTICE OF COMPLIANCE** was served upon opposing counsel as follows:

Robert Hamlin	X U.S. Mail
Idaho Judicial Council	___ Personal Delivery
PO Box 1397	___ Facsimile
Boise, ID 83701	

R. Keith Roark
The Roark Law Firm
409 N. Main Street
Hailey, ID 83333

_X_ U.S. Mail
___ Personal Delivery
___ Facsimile

Michael E. McNichols
Clements, Brown
& McNichols, PA
PO Box 1510
Lewiston, ID 83501

_X_ U.S. Mail
___ Personal Delivery
___ Facsimile

M. Karl Shurtliff
Attorney at Law
800 W. State Street,
Suite 200
P.O. Box 1652
Boise, ID 83701-1652

_X_ U.S. Mail
___ Personal Delivery
___ Facsimile

RUNFT & STEELE
LAW OFFICES, PLLC

By: /s/ John L. Runft
JOHN L. RUNFT
Attorney for Petitioner

IN THE SUPREME COURT
OF THE STATE OF IDAHO

JOHN H. BRADBURY, Petitioner, v. IDAHO JUDICIAL COUNCIL, Respondent.	)	DOCKET NO. 36175 AFFIDAVIT (Filed Sept. 30, 2009)

John Bradbury being sworn, on oath states:

Pursuant to the Opinion in this case dated September 10, 2009, I state that I "actually reside" in Idaho County as I understand that to have been defined by the Opinion and I will continue to do so as long as the law requires it.

In that regard I have placed my Lewiston house on the market, arranged for all my mail to be delivered at Grangeville and have registered my vehicles in Idaho County.

Without detracting from the above, I make this affidavit without prejudice to any further legal recourse I have or might have.

/s/ John Bradbury

SUBSCRIBED AND SWORN to before me this 28th day of September, 2009.

/s/ Lauri M. Stifanick
Notary Public for Idaho

[NOTARY SEAL]

Residing at: Orofino, ID

My Commission expires: 12/24/14

THE **ROARK**
LAW FIRM LLP

HAILEY
409 NORTH MAIN STREET
HAILEY, IDAHO 83333
TEL: (208) 788-2427
FAX: (208) 788-3918

WWW.ROARKLAW.COM

R. KEITH ROARK

October 7, 2008

Michael E. McNichols, Esq.
Clements, Brown & McNichols, PA
PO Box 1510, Lewiston, ID 83501

Re: In re: Hon. John Bradbury

Dear Mike:

I have passed your suggestion that we mediate the disciplinary case now pending against Judge Bradbury on to the Judicial Council for their review. The Council has authorized me to agree that, if your client admits to having violated I.C. §§1-803 and 809 by not actually residing in Idaho County during the past two years (Count I) and agrees to immediately take up full-time residence in Idaho County, we will mediate the question of what sanction should be imposed and drop all other charges.

The Council feels strongly that Judge Bradbury's refusal to obey the relevant statute, even after having been warned by the Executive Director of the need to do so, cannot be mediated away as if it had never occurred.

Please advise me at your earliest opportunity as to how you and your client wish to proceed.

Sincerely,

/s/ R. Keith Roark
R. Keith Roark
Special Examiner

cc: Robert Hamlin

STATE OF IDAHO
JUDICIAL COUNCIL

[Names And Addresses Omitted In Printing]

[SEAL]

January 22, 2008

PERSONAL AND CONFIDENTIAL

Honorable John Bradbury
Idaho County Courthouse
320 W. Main Street
Grangeville, Idaho 83530

Re: Preliminary Investigation

Dear Judge Bradbury:

The Judicial Council has reviewed the Report of Preliminary Investigation on the issue of whether you actually reside in Idaho County as required by Idaho Code § 1-803(3c) which provides for resident chambers of a district judge in Idaho County, and Idaho Code § 1-809 which provides that "district judges shall actually reside at the place designated as resident chambers."

After reviewing and discussing the Report of Preliminary Investigation, including the transcript of your interview on October 31, 2007, the Judicial Council has determined that there appears to be substantial evidence that you do not "actually reside" in Idaho County.

Idaho Code of Judicial Conduct Canon 2A provides that "judges should respect and comply with the law and should conduct themselves at all times in a manner that does not detract from public confidence in the integrity and impartiality of the judiciary." The members of the Judicial Council understand that you feel that you cannot perform your judicial duties as efficiently if you live in Grangeville. However, they are of the opinion that if the statute requires you to actually reside in Idaho County, that you must actually reside in Idaho County.

The Judicial Council is willing to hold this matter in abeyance if you demonstrate with objective, demonstrable evidence, that you actually reside in Idaho County. If the Judicial Council does not receive such information within fourteen (14) days, it will proceed with formal charges and schedule the matter for hearing.

The members of the Judicial Council asked me to assure you that they have not made an actual determination on the facts in this matter and will do so only after a formal hearing on the matter. This letter is submitted to you only in an effort to resolve this issue without the necessity of a formal disciplinary proceeding.

Very truly yours,

/s/ Robert G. Hamlin
Robert G. Hamlin
Executive Director

RGH:sh

STATE OF IDAHO
JUDICIAL COUNCIL

[Names And Addresses Omitted In Printing]

[SEAL]

September 12, 2007

PERSONAL AND CONFIDENTIAL

Honorable John Bradbury
Idaho County Courthouse
320 W. Main Street
Grangeville, Idaho 83530

Re: Notice of Preliminary Investigation by the Idaho Judicial Council

Dear Judge Bradbury:

The Judicial Council has received additional information and inquiries on whether you actually reside in Idaho County as required by statute.

The Judicial Council has determined under Rule 28 of its General Rules of Procedure, to re-open its file and conduct a preliminary investigation into the matter. The mere fact that a preliminary investigation will be conducted does not signify that members of the Judicial Council have formed any opinion on the merits of the complaint.

As the Executive Director, I will be conducting the investigation in this matter. The investigation will, of course, be confidential. You have the opportunity to present such matters as will be helpful to the investigation if you or your counsel so choose.

Upon completion of the preliminary investigation, the Judicial Council will determine whether formal proceedings should be instituted or whether the case should be closed because the preliminary investigation has not disclosed sufficient cause to warrant further proceedings. You will be notified in either event.

This letter will serve as notice of the preliminary investigation pursuant to Rule 28(b) of the Idaho Judicial Council.

Please feel free to contact me if you would like to discuss the matter further.

Very truly yours,

/s/ Robert G. Hamlin
Robert G. Hamlin
Executive Director

RGH:sh

STATE OF IDAHO
JUDICIAL COUNCIL

[Names And Addresses Omitted In Printing]

[SEAL]

April 18, 2007

PERSONAL AND CONFIDENTIAL

Honorable John Bradbury
Idaho County Courthouse
320 W. Main Street
Grangeville, Idaho 83530

Re: Complaint of Idaho Judicial Council

Dear Judge Bradbury:

This is a follow up to our telephone conversation and your meeting with District Judge Randy Smith. The Judicial Council has reviewed your response to its request for information and is closing its file on the matter.

Thank you very much for your prompt response to the Judicial Council's request for information.

Very truly yours,

/s/ Robert G. Hamlin
Robert G. Hamlin
Executive Director

RGH:sh

DISTRICT COURT
SECOND JUDICIAL DISTRICT
STATE OF IDAHO

[Names And Addresses Omitted In Printing]

[SEAL]

May 4, 2006

Robert G. Hamlin
Executive Director
P.O. Box 9495
Boise, ID 83707

Dear Mr. Hamlin:

This is my response to your letter of May 2, 2006.

I own a fully furnished home in Grangeville at 218 North College Street. My homeowner's exemption is on that residence. I am registered to vote and do in fact vote as a resident of Idaho County. I receive and review my court mail at Grangeville.

I also have a fully furnished home in Lewiston at 729 Preston Avenue. It does not have a homeowner's exemption and I do not vote in Nez Perce County. I use both cities as a mailing address.

At which home I stay depends on where my work is. At this time most of my work is in Clearwater County. To date I have had 18 jury trials in Orofino and 6 in Grangeville.

Very truly yours,

/s/ John Bradbury
JOHN BRADBURY
District Judge

JB:kj

STATE OF IDAHO
JUDICIAL COUNCIL

[Names And Addresses Omitted In Printing]

[SEAL]

May 2, 2006

PERSONAL AND CONFIDENTIAL

Honorable John Bradbury
Idaho County Courthouse
320 W. Main Street
Grangeville, Idaho 83530

Re: Complaint of Idaho Judicial Council

Dear Judge Bradbury:

The Judicial Council, on its own motion, has instructed me to conduct an initial inquiry into the issue of whether you actually reside in Idaho County as required by statute. I would appreciate it if you would provide me with any comments you may have regarding this matter.

Thank you very much for your assistance in this matter.

Very truly yours,

/s/ Robert G. Hamlin
Robert G. Hamlin
Executive Director

RGH:sh

Idaho Code § 1-2103. Removal, disciplining, or retirement of judges or justices – Procedure

A justice of the Supreme Court or judge of any district court, in accordance with the procedure prescribed in this section, may be disciplined or removed for wilful misconduct in office or wilful and persistent failure to perform his duties or habitual intemperance or conduct prejudicial to the administration of justice that brings judicial office into disrepute, or he may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become of a permanent character. The judicial council may, after such investigation as the council deems necessary, order a hearing to be held before it concerning the removal, discipline or retirement of a justice or a judge, or the council may in its discretion request the Supreme Court to appoint three (3) special masters, who shall be justices or judges, to hear and take evidence in any such matters, and to report their findings to the council. If, after hearing, or after considering the record and the findings and report of the masters, the council finds good cause therefor, it shall recommend to the Supreme Court the removal, discipline or retirement, as the case may be, of the justice or judge.

The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal, discipline or retirement, as it finds just and proper, or wholly reject the recommendation. Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to other provisions of law. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order.

All papers filed with and the proceedings before the judicial council or masters appointed by the Supreme Court, pursuant to this section, shall be subject to disclosure according to chapter 3, title 9, Idaho Code, provided, however, that if allegations against a judge are made public by the complainant, judge or third persons, the judicial council may, in its discretion, comment on the existence, nature, and status of any investigation. The filing of papers with and the giving of testimony before the council or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation except that (a) the record filed by the council in the Supreme Court continues privileged and upon such filing loses its confidential character and (b) a writing which was privileged prior to its filing with the council or the masters does not lose such privilege by such filing. The judicial council shall by rule provide for procedures under this section, including the exercise of requisite process and subpoena powers. A justice or judge who is a member of the council or Supreme Court shall not participate in any proceedings involving his own removal, discipline or retirement.

This section is alternative to, and cumulative with, the removal of justices and judges by impeachment, and the original supervisory control of members of the judicial system by the Supreme Court.